

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 484

THE UNITED STATES OF AMERICA, PETITIONER

vs.

THE COOPER CORPORATION ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT*

PETITION FOR CERTIORARI FILED OCTOBER 3, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

—against—

THE COOPER CORPORATION, THE DAYTON RUBBER MANUFACTURING COMPANY, DUNLOP TIRE AND RUBBER CORPORATION, THE FALLS RUBBER CO., THE FIRESTONE TIRE AND RUBBER CO., THE FISK RUBBER CORPORATION, THE GENERAL TIRE AND RUBBER COMPANY, THE B. F. GOODRICH COMPANY, THE GOODYEAR TIRE AND RUBBER COMPANY, INC., THE KELLY-SPRINGFIELD TIRE CO., LEE TIRE AND RUBBER CO. OF N. Y., INC., THE MOHAWK RUBBER CO. OF N. Y., INC., THE NORWALK TIRE AND RUBBER CO., PENNSYLVANIA RUBBER COMPANY, F. G. SCHENUIT RUBBER CO., THE SEIBERLING RUBBER COMPANY, UNITED STATES RUBBER PRODUCTS, INC., AND U. S. TIRE DEALERS CORPORATION,

Defendants-Respondents.

Statement Under Rule 13.

This suit was commenced on February 20, 1939 in the United States District Court for the Southern District of New York by the filing of a complaint.

The complaint was served upon all of the defendants named herein.

The service on F. G. Schenuit Rubber Company was vacated and set aside, pursuant to an order of the Honorable Samuel Mandelbaum, which order was entered on April 27, 1939.

Statement Under Rule 13.

No answers have been filed by the defendants, the time to answer having been extended by stipulation.

4 An order and consent was filed on April 3, 1940 substituting Myles J. Lane, Special Assistant to the Attorney General, as attorney for the plaintiff, in place of John T. Caill, United States Attorney for the Southern District of New York.

A motion was made on behalf of all of the defendants, with the exception of F. G. Schenuit Rubber Company, for an order dismissing the action on the ground that the complaint failed to state a claim against the defendants upon which relief could be granted.

5 An opinion was rendered on February 16, 1940 by the Honorable Edward A. Conger, United States District Judge, granting the defendants' motion dismissing the complaint.

An order and judgment thereon was entered on March 15, 1940.

The appeal was taken by the plaintiff on March 21, 1940.

Complaint.

IN THE
 UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK
 Civil Action, File No. 2-396

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE COOPER CORPORATION, THE DAYTON RUBBER MANUFACTURING COMPANY, DUNLOP TIRE AND RUBBER CORPORATION, THE FALLS RUBBER CO., THE FIRESTONE TIRE AND RUBBER CO., THE FISK RUBBER CORPORATION, THE GENERAL TIRE AND RUBBER COMPANY, THE B. F. GOODRICH COMPANY, THE GOODYEAR TIRE AND RUBBER COMPANY, INC., THE KELLY-SPRINGFIELD TIRE CO., LEE TIRE AND RUBBER CO. OF N. Y., INC., THE MOHAWK RUBBER CO. OF N. Y., INC., THE NORWALK TIRE AND RUBBER CO., PENNSYLVANIA RUBBER COMPANY, F. G. SCHENUIT RUBBER CO., THE SEIBERLING RUBBER COMPANY, UNITED STATES RUBBER PRODUCTS, INC., AND U. S. TIRE DEALERS CORPORATION,

Defendants.

The United States of America, plaintiff herein, by its attorney, the United States District Attorney for the Southern District of New York, complains and alleges as follows:

1. This suit is brought by the plaintiff in its capacity as a purchaser of commodities for consumption by the executive departments of the United States.

Complaint.

10 2. The defendants The Cooper Corporation, The Dayton Rubber Manufacturing Company, The Falls Rubber Co., The Firestone Tire and Rubber Co., The General Tire and Rubber Company, The Goodyear Tire and Rubber Company, Inc., and The Seiberling Rubber Company are corporations organized and existing under the laws of the State of Ohio; the defendants Dunlop Tire and Rubber Corporation, The B. F. Goodrich Company, The Mohawk Rubber Co. of N. Y., Inc., and Lee Tire and Rubber Co. of N. Y., Inc., are corporations organized and existing under the laws of the State of New York; the defendants The Fisk Rubber Corporation, United States Rubber Products, Inc., and U. S. Tire Dealers Corporation are corporations organized and existing under the laws of the State of Delaware; the defendant Pennsylvania Rubber Company is a corporation organized and existing under the laws of the State of Pennsylvania; the defendant The Kelly-Springfield Tire Co. is a corporation organized and existing under the laws of the State of Maryland; the defendant The Norwalk Tire and Rubber Co., Inc., is a corporation organized and existing under the laws of the State of Connecticut; the defendant F. G. Schenuit Rubber Co. is an individual, F. G. Schenuit doing business under the trade name F. G. Schenuit Rubber Co., at Baltimore, Maryland.

12 3. This suit arises under the Act of July 2, 1890, C. 647, 26 Stat. 209 (as amended by Act of August 17, 1937, C. 690, 50 Stat. 693), commonly known as the "Sherman Antitrust Act," and is founded upon Section 7 of said Act, as hereinafter more fully appears.

4. Prior to August 17, 1936, the defendants The Cooper Corporation, The Dayton Rubber Manufacturing Company, Dunlop Tire and Rubber Corporation, The Falls Rubber Co.,

Complaint.

The Firestone Tire and Rubber Co., The Fisk Rubber Corporation, The General Tire and Rubber Company, The B. F. Goodrich Company, The Goodyear Tire and Rubber Company, Inc., The Kelly-Springfield Tire Co., Lee Tire and Rubber Co. of N. Y., Inc., The Norwalk Tire and Rubber Co., Pennsylvania Rubber Company, F. G. Schenuit Rubber Co., The Seiberling Rubber Company, and United States Rubber Products, Inc., entered into a combination and conspiracy in restraint of trade and commerce among the several States and in the District of Columbia, in violation of the Act of July 2, 1890, C. 647, 26 Stat. 209 (as amended by Act of August 17, 1937, C. 690, 50 Stat. 693), commonly known as the "Sherman Antitrust Act," in that said defendants did combine and conspire and agree to fix the prices of tires on sales to the plaintiff throughout the United States.

5. On or about August 3, 1936, the Director of the Procurement Division of the plaintiff's Treasury Department, in accordance with the method of purchasing prescribed by Section 3709 of the Revised Statutes, sent circular letters to all the automobile tire manufacturers in the United States and many dealers in such tires, inviting said manufacturers and dealers to submit sealed bids per size and per Procurement purchasing zone on the tire requirements of the plaintiff throughout the United States during the six-month purchasing period October 1, 1936, to March 31, 1937.

6. Prior to August 17, 1936, the opening date for said bids, and pursuant to the illegal combination and conspiracy and agreement referred to in Paragraph 4 of this complaint and as evidence thereof, the defendants named in Paragraph 4 of this complaint did submit to the Procurement Division sealed bids that were identical to the penny on 82 different

Complaint.

sizes of automobile tires, as set forth in Column 1 of Exhibit A (pp. 1-82, inclusive) attached to this complaint and incorporated as a part hereof.

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7. As a result of said illegal combination and conspiracy and agreement and said identical bidding pursuant thereto, the Procurement Division was led and induced to make contract awards for the six-month purchasing period October 1, 1936, to March 31, 1937, at the prices fixed by the said illegal combination and conspiracy and agreement. Said awards were made to The Cooper Corporation, The Dayton Rubber Manufacturing Company, Dunlop Tire and Rubber Corporation, The Firestone Tire and Rubber Co., The Fisk Rubber Corporation, The General Tire and Rubber Company, The B. F. Goodrich Company, Goodyear Supply Company, Inc., The Goodyear Tire and Rubber Company, Inc., The Kelly-Springfield Tire Co., Lee Tire and Rubber Co. of N. Y., Inc., The Norwalk Tire and Rubber Co., Pennsylvania Rubber Company, F. G. Schenuit Rubber Co., The Seiberling Rubber Company, and United States Rubber Products, Inc. The prices at which the awards were made were substantially higher than the prices at which the awards would have been made had the said illegal combination and conspiracy and agreement not existed, as hereinafter more fully appears.

17

8. Upon notification of the Procurement awards, and in accordance with the terms of their original bids, the bidders named in the preceding Paragraph of this complaint (Par. 7) entered into formal contracts with the plaintiff to supply the tire requirements of the executive departments and other establishments of the plaintiff in Washington, D. C., the Government of the District of Columbia, and all Federal Government field services (exclusive of commissary stores)

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Complaint.

within the continental limits of the United States during the six-month purchasing period October 1, 1936, to March 31, 1937. Said contracts were made in the District of Columbia.

19

9. The aforesaid several contracts with the bidders named in Paragraph 7 of this complaint specified the sizes the particular contractor undertook to furnish, and the Procurement purchasing zone or zones in which said contractor undertook to make delivery—the United States and the District of Columbia being divided for this purpose into thirteen (13) zones, with two or more states in each zone. The several contracts further specified distributing points in each zone for each contractor, at which the contractor was regularly to maintain an adequate fresh stock of tires and at which the various government agencies could place orders when and as tires were needed. Deliveries were to be made within two (2) calendar days after receipt of the order, f. o. b. railroad freight station in the continental United States, except Alaska, nearest to the point of destination stated in the shipping instructions or purchasing order.

20

10. The aforesaid several contracts with the bidders named in Paragraph 7 of this complaint contemplated the delivery of tires by the contractors to the various government agencies throughout the United States and in the District of Columbia, and in order to maintain adequate fresh stocks of tires at their distributing points, and thus meet the two-day delivery requirement on government orders, the several contractors were from time to time required to make and did make shipments of tires from their several factories or sources of supply to their several distributing points located in states other than those from which the shipments were

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made or in the District of Columbia. In order to meet specific orders under the aforesaid several contracts, the several contractors were from time to time required to make and did make shipments of tires from their several factories or sources of supply or their several distributing points to government agencies located in states other than those from which the shipments were made or in the District of Columbia.

11. During the six-month purchasing period October 1, 1936, to March 31, 1937, the plaintiff through its executive departments the Post Office Department, the Treasury Department, the Department of the Interior, and the Department of Agriculture, purchased tires under the aforesaid several contracts at the prices and in the quantities as set forth per size in Columns 1 and 11 of Exhibit A (pp. 1-82, inclusive) attached to this complaint and incorporated as a part hereof.

12. On or about December 23, 1936, the Director of the Procurement Division of the plaintiff's Treasury Department sent circular letters to all the automobile tire manufacturers in the United States and many dealers in such tires, inviting said manufacturers and dealers to submit sealed bids per size and per Procurement purchasing zone on the tire requirements of the plaintiff throughout the United States during the six-month purchasing period April 1, 1937, to September 30, 1937.

13. Prior to January 25, 1937, the opening date for said bids as extended, and pursuant to the illegal combination and conspiracy and agreement referred to in Paragraph 4 of this complaint and as evidence thereof, the defendants The

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Firestone Tire and Rubber Co., The Fisk Rubber Corporation, The General Tire and Rubber Company, The B. F. Goodrich Rubber Company, Inc., The Goodyear Tire and Rubber Company, Inc., The Kelly-Springfield Tire Co., Lee Tire and Rubber Co. of N. Y., Inc., Pennsylvania Rubber Company, F. G. Schenuit Rubber Co., The Seiberling Rubber Company, and also the defendant U. S. Tire Dealers Corporation, a new member admitted to the conspiracy referred to in Paragraph 4 of this complaint, did submit to the Procurement Division sealed bids that were identical to the penny on 82 different sizes of automobile tires, as set forth in Column 2 of Exhibit A (pp. 1-82, inclusive) to this complaint.

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14. As a result of the illegal combination and conspiracy and agreement referred to in Paragraph 4 of this complaint and the identical bidding pursuant thereto referred to in Paragraph 13 of this complaint, the Procurement Division was led and induced to make contract awards for the six-month purchasing period April 1, 1937, to September 30, 1937, at the prices fixed by the said illegal combination and conspiracy and agreement. Said awards were made to The Firestone Tire and Rubber Co., The Fisk Rubber Corporation, The General Tire and Rubber Company, The B. F. Goodrich Company, Goodyear Supply Company, Inc., The Goodyear Tire and Rubber Company, Inc., The Kelly-Springfield Tire Co., Lee Tire and Rubber Co. of N. Y., Inc., Pennsylvania Rubber Company, F. G. Schenuit Rubber Co., The Seiberling Rubber Company, and U. S. Tire Dealers Corporation. The prices at which the awards were made were substantially higher than the prices at which the awards would have been made had the illegal combination and conspiracy and agreement not existed, as hereinafter more fully ap-

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28 pears, and said prices were also substantially higher than the prices fixed for the preceding six-month purchasing period October 1, 1936, to March 31, 1937.

29 15. Upon notification of the Procurement awards, and in accordance with the terms of their original bids, the bidders named in the preceding paragraph of this complaint (Par. 14) entered into formal contracts with the plaintiff to supply the tire requirements of the executive departments and other establishments of the plaintiff in Washington, D. C., the Government of the District of Columbia, and all Federal Government field services (exclusive of commissary stores) within the continental limits of the United States during the six-month purchasing period April 1, 1937, to September 30, 1937. Said contracts were made in the District of Columbia.

16. The said contracts for the six-month purchasing period April 1, 1937, to September 30, 1937, contained provisions identical to those referred to in Paragraph 9 of this complaint with respect to the preceding six-month purchasing period October 1, 1936, to March 31, 1937.

30 17. The aforesaid several contracts with the bidders named in Paragraph 14 of this complaint contemplated the delivery of tires by the contractors to the various government agencies throughout the United States and in the District of Columbia, and in order to maintain adequate fresh stocks of tires at their distributing points and thus meet the two-day delivery requirement on Government orders, the several contractors were from time to time required to make and did make shipments of tires from their several factories or sources of supply to their several distributing points located in

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states other than those from which the shipments were made or in the District of Columbia. In order to meet specific orders under the aforesaid several contracts, the several contractors were from time to time required to make and did make shipments of tires from their several factories or sources of supply or their several distributing points to government agencies located in states other than those from which the shipments were made or in the District of Columbia.

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18. During the six-month purchasing period April 1, 1937, to September 30, 1937, the plaintiff through its executive departments the Post Office Department, the Treasury Department, the Department of the Interior, and the Department of Agriculture, purchased tires under the aforesaid several contracts at the prices and in the quantities as set forth per size in Columns 2 and 12 of Exhibit A (pp. 1-82, inclusive) attached to this complaint.

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19. On or about July 6, 1937, the Director of the Procurement Division of the plaintiff's Treasury Department sent circular letters to all the automobile tire manufacturers in the United States and many dealers in such tires, inviting said manufacturers and dealers to submit sealed bids per size and per Procurement purchasing zone on the tire requirements of the plaintiff throughout the United States during the six-month purchasing period October 1, 1937, to March 31, 1938.

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20. Prior to July 21, 1937, the opening date for said bids, and pursuant to the illegal combination and conspiracy and agreement referred to in Paragraph 4 of this complaint and as evidence thereof, the defendants The Cooper Corporation,

Complaint.

34 The Dayton Rubber Manufacturing Company, The Falls Rubber Co., The Firestone Tire and Rubber Co., The Fisk Rubber Corporation, The General Tire and Rubber Company, The B. F. Goodrich Company, The Goodyear Tire and Rubber Company, Inc., The Kelly-Springfield Tire Co., Lee Tire and Rubber Co. of N. Y., Inc., The Norwalk Tire and Rubber Co., Pennsylvania Rubber Company, F. G. Schenuit Rubber Co., The Seiberling Rubber Company, United States Rubber Products, Inc., and also the defendant The Mohawk Rubber Co. of N. Y., Inc., a new member admitted to the conspiracy referred to in Paragraph 4 of this complaint, did submit to the Procurement Division sealed bids that were identical to the penny on 82 different sizes of automobile tires, as set forth in Column 3 of Exhibit A (pp. 182, inclusive) to this complaint.

35 21. The prices fixed by the said illegal combination and conspiracy for the six-month purchasing period October 1, 1937, to March 31, 1938, were substantially higher than the prices fixed for the preceding six-month period. Confronted with continued identical bidding and continued increases in prices, the Treasury Department sought the counsel of the plaintiff's Attorney General, and was advised by the Attorney General that rejection of the bids submitted for the six-month purchasing period October 1, 1937, to March 31, 1938, would be in order, on the ground that the bids were *prima facie* the result of a combination in restraint of trade.

36 22. Upon receipt of said advice, the Director of the Procurement Division rejected said bids opened July 21, 1937, and on or about September 11, 1937, again sent circular letters to all the automobile tire manufacturers in the United States and many dealers, advising said manufacturers and

Complaint.

dealers that the bids opened July 21, 1937, had been rejected because of the indication of agreement among bidders on the prices to be bid, and inviting said manufacturers and dealers to submit new sealed bids per size and per Procurement purchasing zone on the tire requirements of the plaintiff throughout the United States during the six-month purchasing period October 1, 1937, to March 31, 1938.

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23. Prior to September 20, 1937, the opening date for said new bids, the defendants named in Paragraph 20 of this complaint, with the exception of F. G. Schenuit Rubber Co., did resolve to continue in effect the illegal combination and conspiracy referred to in Paragraph 4 of this complaint, and pursuant to such resolution said defendants did submit to the Procurement Division new sealed bids that were identical to the penny on 82 different sizes of automobile tires and that were also identical to the penny to the rejected bids previously submitted by the defendants for the same period, as set forth in Column 4 of Exhibit A (pp. 1-82, inclusive) to this complaint.

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24. Upon examination of the new bids opened September 20, 1937, the Treasury Department rejected said bids as collusive, and thereupon determined that a public exigency existed requiring that the plaintiff's tire requirements for the period October 1, 1937, to March 31, 1938, be procured by open purchase or negotiated contract. In accordance with such determination, and after preliminary negotiations, the plaintiff through its Director of Procurement entered into a contract with Sears, Roebuck and Company whereby the latter agreed to furnish and did furnish the plaintiff's tire requirements throughout the United States (with the exception of a limited number of miscellaneous sizes) for the

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Complaint.

40 period October 1, 1937, to March 31, 1938, at prices lower than the prices for such period fixed by the illegal combination and conspiracy referred to in Paragraph 4 of this complaint but substantially higher than the prices at which awards for such period would have been made had the said illegal combination and conspiracy not existed, as hereinafter more fully appears. Said Sears, Roebuck and Company prices (inclusive of Federal excise tax) for the period October 1, 1937, to March 31, 1938, appear per 82 different sizes in Column 5 of Exhibit A (pp. 1-82, inclusive) to this complaint.

41 25. On or about January 21, 1938, the Director of the Procurement Division of the plaintiff's Treasury Department sent circular letters to all the automobile tire manufacturers in the United States and many dealers in such tires, inviting said manufacturers and dealers to submit sealed bids per size and per Procurement purchasing zone on the tire requirements of the plaintiff throughout the United States during the six-month purchasing period April 1, 1938, to September 30, 1938. On this occasion said Director of Procurement expressly required that all bids submitted pursuant to such invitation contain a representation by the bidder that the prices bid were neither directly nor indirectly the result of any agreement among bidders.

42 26. Among others, all the defendants in this proceeding, except the Dunlop Tire and Rubber Corporation and U. S. Tire Dealers Corporation, submitted bids for the six-month purchasing period April 1, 1938, to September 30, 1938. The bids for such period, opened February 7, 1938, were found to be competitive in character, and appear per 82 different sizes in Column 6 of Exhibit A (pp. 1-82, inclusive) attached to this complaint.

Complaint.

27. As a result of the competitive character of the bids for the six-month purchasing period April 1, 1938, to September 30, 1938, as contrasted with the non-competitive character of the bids for the three preceding six-month periods October 1, 1936, to March 31, 1937, April 1, 1937, to September 30, 1937, and October 1, 1937, to March 31, 1938, the plaintiff was enabled to procure its tire requirements for the period April 1, 1938, to September 30, 1938, at prices substantially lower than the prices at which the plaintiff procured its tires for the three preceding six-month periods. Said prices at which the plaintiff procured its tires for the period April 1, 1938, to September 30, 1938, appear per 82 different sizes in Column 7 of Exhibit A (pp. 1-82, inclusive) attached to this complaint.

28. Had there been no illegal combination and conspiracy to fix the prices at which the plaintiff purchased its tires for the periods October 1, 1936, to March 31, 1937, April 1, 1937, to September 30, 1937, and October 1, 1937, to March 31, 1938, the plaintiff would have purchased its tires for said periods at prices at least as low as the prices at which the plaintiff purchased its tires for the period April 1, 1938, to September 30, 1938. The decline in the prices which the plaintiff paid for tires for the first three six-month periods to the prices which the plaintiff paid for tires during the period April 1, 1938, to September 30, 1938, was due solely to the elimination of the illegal combination and conspiracy to fix prices referred to in Paragraph 4 of this complaint and the advent of competitive bidding. From October 1, 1936, to September 30, 1938, there was no decline in the retail prices of tires to the general public throughout the United States.

Complaint.

46 29. As a result of the aforesaid illegal combination and conspiracy to fix the prices of tires on sales to the plaintiff throughout the United States, the plaintiff was injured in its property at least to the extent of the difference between the prices at which it purchased tires during the period October 1, 1936, to March 31, 1937, and the prices at which it purchased tires during the period April 1, 1938, to September 30, 1938. The amount of such difference per 82 different sizes of tires appears in Column 8 of Exhibit A (pp. 1-82, inclusive) attached to this complaint. The minimum injury on a particular size of tire is obtained by multiplying such difference for that size by the number of tires of that size purchased, as appears in Column 11 of Exhibit A (pp. 1-82, inclusive) attached to this complaint. The total minimum injury thus sustained by the plaintiff on the purchases referred to in Paragraph 11 of this complaint amounts to \$98,997.57.

47 30. As a result of the aforesaid illegal combination and conspiracy to fix the prices of tires on sales to the plaintiff throughout the United States the plaintiff was injured in its property at least to the extent of the difference between the prices at which it purchased tires during the period April 1, 1937, to September 30, 1937, and the prices at which it purchased tires during the period April 1, 1938, to September 30, 1938. The amount of such difference per 82 different sizes of tires appears in Column 9 of Exhibit A (pp. 1-82, inclusive) attached to this complaint. The minimum injury on a particular size of tire is obtained by multiplying such difference for that size by the number of tires of that size purchased, as appears in Column 12 of Exhibit A (pp. 1-82, inclusive) attached to this complaint. The total minimum

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Complaint.

injury thus sustained by the plaintiff on the purchases referred to in Paragraph 18 of this complaint amounts to \$127,160.64.

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31. As a result of the aforesaid illegal combination and conspiracy to fix the prices of tires on sales to the plaintiff throughout the United States, the plaintiff was injured in its property at least to the extent of the difference between the prices at which it purchased tires during the period October 1, 1937, to March 31, 1938, and the prices at which it purchased tires during the period April 1, 1938, to September 30, 1938. The amount of such difference (computed without deduction of Federal excise tax) appears per 82 different sizes of tires in Column 10 of Exhibit A (pp. 1-82, inclusive) attached to this complaint. The minimum injury on a particular size of tire is obtained by multiplying such difference (less deduction of Federal excise tax) for that size by the number of tires of that size purchased. The total minimum injury sustained by the plaintiff on tire purchases during the period October 1, 1937, to March 31, 1938, is estimated at \$125,000.

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Wherefore, the plaintiff, in accordance with the provisions of Section 7 of the Sherman Antitrust Act, demands judgment against the defendants in the amount of \$1,053,474.63, representing thrice the actual damages sustained by the plaintiff on the purchases referred to in Paragraph 11 of this complaint, plus thrice the actual damages sustained by the plaintiff on the purchases referred to in Paragraph 18 of this complaint, plus thrice the estimated actual damages sustained by the plaintiff on tire purchases during the period October 1, 1937, to March 31, 1938, and plaintiff further

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demand judgment against the defendants for the costs of this suit, including a reasonable attorney's fee.

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(Signed) GREGORY F. NOONAN,
*United States District Attorney for
the Southern District of New York.*

FRANK MURPHY,
Attorney General of the United States.

THURMAN ARNOLD,
Assistant Attorney General.

53

ALLEN DOBEY,
Special Assistant to the Attorney General.

JOSEPH MCDOWELL,
Special Attorney.

RICHARD DECKER,
Special Attorney.

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EXHIBIT A (P. 1)

SIZE: 4.50 BY 21 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 6/9/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$4.73	\$4.63	\$4.16	\$0.33	\$0.60	\$0.57
The Cooper Corp	\$4.49	....	\$5.05	\$5.05	....	4.76	....	....	....	....
Dayton Rubber Mfg	4.49	....	5.05	5.05	....	4.76	....	....	....	....
Dunlop Tire	4.49	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	4.49	....	....	....	....	....	....	....	....	....
Firestone Tire	4.49	\$4.76	5.05	5.05	....	4.26	....	....	....	25
Fisk Rubber Corp	4.49	4.76	5.05	5.05	....	4.25	....	....	....	....
General Tire	4.49	4.76	5.05	5.05	....	5.07	....	....	....	....
B. F. Goodrich Co	4.49	4.76	5.05	5.05	....	4.64	....	....	....	....
Goodyear Tire	4.49	4.76	5.05	5.05	....	5.97	....	....	....	....
Hicks Rubber Co.	....	....	....	....	....	5.42	....	....	....	....
Kelly-Springfield	4.49	4.76	5.05	5.05	....	4.87	....	....	....	....
Lee Tire & Rubber	4.49	4.76	5.05	5.05	....	5.36	....	....	....	....
Mohawk	....	....	5.05	5.05	....	5.05	....	....	....	....
Norwalk Tire	4.49	....	....	5.05	....	5.57	....	....	....	....
Pennsylvania	4.49	4.76	5.05	5.05	....	4.45	....	....	....	....
F. G. Schenuit	4.49	....	....	....	....	5.96	....	....	....	....
Seiberling Rubber	4.49	4.76	....	....	....	4.16	....	....	....	....
U. S. Rubber Prod	4.49	....	5.05	5.05	....	4.22	....	....	....	....
U. S. Tire Dealers	....	4.76	....	....	....	....	....	....	....	....

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

19

10

25

Damages sustained on such purchases during period 4/1/37 to 9/30/37

(25X\$0.60)

(10X\$0.33)

\$15.00

\$3.30

55

56

57

EXHIBIT A (P. 2)

SIZE: 4.50 BY 21 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 3 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 4 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 5 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 6 Award prices 4/1/38 to 9/30/38	Column 7 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 8 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	\$5.71	\$6.41	\$6.41	\$6.25	\$5.90	\$5.08	\$0.63	\$1.16	\$1.17	
The Cooper Corp	5.71	6.41	6.41	.....	5.29	.....	.....	.....	.....
Dayton Rubber Mfg	5.71	.....	.....	.....	6.09	.....	.....	.....	.....
Dunlop Tire	5.71	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	5.71	.....	.....	.....	.....	.....	.....	.....	.....
Firestone Tire	5.71	\$6.05	6.41	.....	5.52	.....	.....	.....	751	
Fisk Rubber Corp	5.71	6.05	.....	.....	.....	.....	.....	.....	.....
General Tire	5.71	6.05	6.41	.....	.....	.....	.....	.....	.....
B. F. Goodrich Co	5.71	6.05	6.41	6.41	.....	.....	.....	.....	.....
Goodyear Tire	5.71	6.05	6.41	6.41	.....	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	6.55	.....	.....	.....	(998X\$0.63)	
Kelly-Springfield	5.71	6.05	6.41	6.41	6.13	.....	.....	.....	(751X\$1.16)	
Lee Tire & Rubber	5.71	6.05	6.41	6.41	6.35	.....	.....	.....	\$628.74	
Mohawk	.....	.....	.....	.....	6.32	.....	.....	.....	.....
Norwalk Tire	5.71	.....	6.41	6.41	6.98	.....	.....	.....	.....
Pennsylvania	5.71	6.05	6.41	6.41	5.88	.....	.....	.....	.....
F. G. Schenuit	5.71	.....	.....	.....	7.47	.....	.....	.....	.....
Seiberling Rubber	5.71	6.05	6.41	6.41	5.08	.....	.....	.....	.....
U. S. Rubber Prod	5.71	.....	6.41	6.41	5.28	.....	.....	.....	.....
U. S. Tire Dealers	.....	.....	6.41	6.41	.....	.....	.....	.....	.....

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$5.06	\$4.86	\$4.34	\$0.48	\$0.77	\$0.72
The Cooper Corp	\$4.82	....	\$5.42	\$5.42	....	4.89	....	....	....	....
Dayton Rubber Mfg	4.82	....	5.42	5.42	....	5.13	....	....	....	....
Dunlop Tire	4.82	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	4.82	....	5.42	5.42	....	4.95	....	....	....	....
Firestone Tire	4.82	....	5.42	5.42	....	4.55	....	....	....	....
Fisk Rubber Corp	4.82	\$5.11	5.42	5.42	....	4.62	....	....	....	....
General Tire	4.82	5.11	5.42	5.42	....	5.21	....	....	....	....
B. F. Goodrich Co	4.82	5.11	5.42	5.42	....	4.47	....	....	....	....
Goodyear Tire	4.82	5.11	5.42	5.42	....	7.27	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	5.67	....	....	....	....
Kelly-Springfield	4.82	5.11	5.42	5.42	....	5.01	....	....	....	....
Lee Tire & Rubber	4.82	5.11	5.42	5.42	....	5.37	....	....	....	....
Mohawk	....	....	5.42	5.42	....	5.19	....	....	....	....
Norwalk Tire	4.82	....	5.42	5.42	....	5.73	....	....	....	....
Pennsylvania	4.82	5.11	5.42	5.42	....	4.76	....	....	....	....
F. G. Schenuit	4.82	....	....	....	....	6.13	....	....	....	....
Seiberling Rubber	4.82	5.11	5.42	5.42	....	4.34	....	....	....	....
U. S. Rubber Prod	4.82	....	5.42	5.42	....	4.21	....	....	....	....
U. S. Tire Dealers	....	5.11	....	....	....	....	....	....	....	....

Column 11
Number of tires purchased during period 10/1/36 to 3/31/37
46

Column 12
Number of tires purchased during period 4/1/37 to 9/30/37
40

Damages sustained on such purchases (46X\$0.48)
\$22.08

Damages sustained on such purchases (40X\$0.77)
\$30.80

EXHIBIT A (P.4)

SIZE: 4.75 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Bears, Roebuck & Co	....	....	....	....	\$6.25	\$6.16	\$5.29	\$0.65	\$1.01	\$0.96
The Cooper Corp	\$5.94	....	\$6.68	\$6.68	....	5.49	....	....	....	....
Dayton Rubber Mfg	5.94	....	6.68	6.68	....	6.36	....	....	....	....
Dunlop Tire	5.94	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	5.94	....	6.68	6.68	....	5.48	....	....	....	....
Firestone Tire	5.94	\$6.30	6.68	6.68	....	5.60	....	....	....	....
Fisk Rubber Corp	5.94	6.30	6.68	6.68	....	5.53	....	....	....	....
General Tire	5.94	6.30	6.68	6.68	....	6.51	....	....	....	....
B. F. Goodrich Co	5.94	6.30	6.68	6.68	....	5.60	....	....	....	....
Goodyear Tire	5.94	6.30	6.68	6.68	....	9.31	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	6.85	....	....	....	....
Kelly-Springfield	5.94	6.30	6.68	6.68	....	6.31	....	....	....	....
Lee Tire & Rubber	5.94	6.30	6.68	6.68	....	6.38	....	....	....	....
Mohawk	....	....	6.68	6.68	....	6.49	....	....	....	....
Norwalk Tire	5.94	....	6.68	6.68	....	7.16	....	....	....	....
Pennsylvania	5.94	6.30	6.68	6.68	....	5.88	....	....	....	....
F. G. Schenquit	5.94	....	....	....	....	7.66	....	....	....	....
Seiberling Rubber	5.94	6.30	6.68	6.68	....	5.29	....	....	....	....
U. S. Rubber Prod	5.94	....	6.68	6.68	....	5.42	....	....	....	....
U. S. Tire Dealers	....	6.30	....	....	....	....	....	....	....	....

Column 12

Column 11

Number of tires purchased during period 4/1/37 to 9/30/37

2,432

2,371

Damages sustained on such purchases

(2,371 X \$0.65)

\$1,541.15

Damages sustained

on such purchases

(2,432 X \$1.01)

\$2,456.32

EXHIBIT A (P. 5)

SIZE: 5.00 BY 17 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$5.42	\$5.10	\$4.54	\$0.43	\$0.73	\$0.88
The Cooper Corp	....	....	....	....	....	....	....	Column 11	Column 12	
Dayton Rubber Mfg	....	....	....	....	....	....	....	Number of tires purchased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	
Dunlop Tire	\$4.97	....	....	....	....	....	....	8	12	
Falls Rubber Corp	....	....	....	....	....	....	....	....	....
Firestone Tire	4.97	\$5.27	\$5.59	\$5.59	....	4.54	....	....	....
Fisk Rubber Corp	4.97	5.27	5.59	5.59	....	4.71	....	....	....
General Tire	4.97	5.27	5.59	5.59	....	5.31	....	Damages sustained on such purchases	Damages sustained on such purchases	
B. F. Goodrich Co	4.97	5.27	5.59	5.59	....	4.93	....	(8X\$0.43)	(12X\$0.73)	
Goodyear Tire	4.97	5.27	5.59	5.59	....	6.26	....	\$3.44	\$8.76	
Hicks Rubber Co	....	....	....	....	....	....	....	....	....
Kelly-Springfield	4.97	....	....	....	....	5.13	....	....	....
Lee Tire & Rubber	....	....	....	....	....	....	....	....	....
Mohawk	....	....	....	....	....	....	....	....	....
Norwalk Tire	....	....	....	....	....	....	....	....	....
Pennsylvania	....	....	....	....	....	....	....	....	....
F. G. Schenuit	....	....	....	....	....	....	....	....	....
Seiberling Rubber	....	5.27	....	....	....	....	....	....	....
U. S. Rubber Prod	4.97	....	5.59	5.59	....	4.97	....	....	....
U. S. Tire Dealers	....	5.27	....	....	....	....	....	....	....

23

67

68

69

EXHIBIT A (P. 6)

SIZE: 5.00 BY 19 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/23/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$5.54	\$5.18	\$4.51	\$0.58	\$0.89	\$1.03
The Cooper Corp	\$5.09	....	\$5.72	\$5.72	....	5.15	....	....	....	....
Dayton Rubber Mfg	5.09	....	5.72	5.72	....	5.43	....	....	....	....
Dunlop Tire	5.09	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	5.09	....	5.72	5.72	....	5.36	....	....	....	....
Firestone Tire	5.09	\$5.40	5.72	5.72	....	4.92	....	....	....	....
Fisk Rubber Corp	5.09	5.40	5.72	5.72	....	4.79	....	....	....	....
General Tire	5.09	5.40	5.72	5.72	....	5.61	....	....	....	....
B. F. Goodrich Co	5.09	5.40	5.72	5.72	....	4.99	....	....	....	....
Goodyear Tire	5.09	5.40	5.72	5.72	....	6.63	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	5.93	....	....	....	....
Kelly-Springfield	5.09	5.40	5.72	5.72	....	5.40	....	....	....	....
Lee Tire & Rubber	5.09	5.40	5.72	5.72	....	5.59	....	....	....	....
Mohawk	....	....	5.72	5.72	....	5.60	....	....	....	....
Norwalk Tire	5.09	....	5.72	5.72	....	6.18	....	....	....	....
Pennsylvania	5.09	5.40	5.72	5.72	....	5.21	....	....	....	....
F. G. Schenuit	5.09	....	....	....	....	6.61	....	....	....	....
Seiberling Rubber	5.09	5.40	5.72	5.72	....	4.51	....	....	....	....
U. S. Rubber Prod	5.09	....	5.72	5.72	....	4.51	....	....	....	....
U. S. Tire Dealers	....	5.40	....	....	....	....	....	....	....	....
								Number of tires pur- chased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	
								26		34
								Damages sustained	Damages sustained	
								on such purchases	on such purchases	
								(26X\$0.58)	(34X\$0.89)	
								\$15.08	\$30.26	

EXHIBIT A (P. 7)

SIZE: 5.00 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/1/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 9/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	....	....	....	....	\$6.85	\$6.56	\$5.51	\$1.02	\$1.41	\$1.34
The Cooper Corp	\$6.53	....	\$7.34	\$7.34	....	5.79	....	....	....	....
Dayton Rubber Mfg	6.53	....	7.34	7.34	....	7.03	....	....	....	....
Dunlop Tire	6.53	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	6.53	....	7.34	7.34	....	5.92	....	....	....	....
Firestone Tire	6.53	\$6.92	7.34	7.34	....	6.05	....	....	....	....
Fisk Rubber Corp	6.53	6.92	7.34	7.34	....	5.71	....	....	....	....
General Tire	6.53	6.92	7.34	7.34	....	7.03	....	....	....	....
B. F. Goodrich Co.	6.53	6.92	7.34	7.34	....	6.25	....	....	....	....
Goodyear Tire	6.53	6.92	7.34	7.34	....	8.30	....	....	....	....
Hicks Rubber Co.	....	....	....	....	....	7.31	....	....	....	....
Kelly-Springfield	6.53	6.92	7.34	7.34	....	6.83	....	....	....	....
Lee Tire & Rubber	6.53	6.92	7.34	7.34	....	7.00	....	....	....	....
Mohawk	....	....	7.34	7.34	....	7.01	....	....	....	....
Norwalk Tire	6.53	....	7.34	7.34	....	7.74	....	....	....	....
Pennsylvania	6.53	6.92	7.34	7.34	....	6.44	....	....	....	....
F. G. Schenuit	6.53	....	....	....	....	8.28	....	....	....	....
Seiberling Rubber	6.53	6.92	7.34	7.34	....	5.51	....	....	....	....
U. S. Rubber Prod	6.53	....	7.34	7.34	....	5.80	....	....	....	....
U. S. Tire Dealers	....	6.92	....	....	....	....	....	....	....	....

Column 11

Number of tires pur-
chased during period
10/1/36 to 3/31/37

73

56

Damages sustained
on such purchases

(73X\$1.02)

\$74.46

Damages sustained
on such purchases

(56X\$1.41)

\$78.96

73

74

75

EXHIBIT A (P. 8)

SIZE: 5.25 BY 17 (PASSENGER, 4 PLY).

[illegible]

EXHIBIT A (P. 9)

SIZE: 5.25 BY 17 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/38 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$7.35	\$6.64	\$5.93	\$1.10	\$1.53	\$1.32
The Cooper Corp	\$7.13	.....	\$8.01	\$8.01	.....	6.30 (Zones 1-5)	.....	.....	.....	.....
Dayton Rubber Mfg	7.13	.....	8.01	8.01	.....	7.66	6.03	.....	.....	.....
Dunlop Tire	7.13	.....	.....	.....	.....	.....	(All others)	.....	.....	.....
Falls Rubber Corp	7.13	.....	8.01	8.01	.....	5.82	.....	.....	.....	.....
Firestone Tire	7.13	\$7.56	8.01	8.01	.....	6.03	.....	.....	.....	.....
Fisk Rubber Corp	7.13	7.56	8.01	8.01	.....	5.93	.....	.....	.....	.....
General Tire	7.13	7.56	8.01	8.01	.....	7.41	.....	.....	.....	.....
B. F. Goodrich Co	7.13	7.56	8.01	8.01	.....	6.60	1.533	.....	.....	1.317
Goodyear Tire	7.13	7.56	8.01	8.01	.....	7.15	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	7.18	.....	.....	.....	.....
Kelly-Springfield	7.13	7.56	8.01	8.01	.....	7.15	.....	.....	.....	.....
Lee Tire & Rubber	7.13	7.56	8.01	8.01	.....	7.00	(1.533X\$1.10)	.....	.....	.....
Mohawk	.....	.....	8.01	8.01	.....	7.40	\$1,686.30	.....	.....	\$2,015.01
Norwalk Tire	7.13	.....	8.01	8.01	.....	8.18	.....	.....	.....	.....
Pennsylvania	7.13	7.56	8.01	8.01	.....	6.91	.....	.....	.....	.....
F. G. Schenuit	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seiberling Rubber	7.13	7.56	8.01	8.01	.....	6.08	.....	.....	.....	.....
U. S. Rubber Prod	7.13	.....	8.01	8.01	.....	6.18	.....	.....	.....	.....
U. S. Tire Dealers	.....	7.56	.....	.....	.....	.....	.....	.....	.....	.....

EXHIBIT A (P. 10)

SIZE: 5.25 BY 18 (PASSENGER, 4 PLY)

Company	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	Opening of 7/21/37 for period 10/1/37 to 3/31/37	Opening of 7/21/37 for period 10/1/37 to 3/31/37	Opening of 7/21/37 for period 10/1/37 to 3/31/37	Opening of 7/21/37 for period 10/1/37 to 3/31/37	Sears, Roebuck & Co. price for period 10/1/37 to 3/31/37	Opening of 2/7/38 for period 4/1/38 to 9/30/38	Award prices 4/1/38 to 9/30/38	Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	5.78	6.50	6.50	6.50	\$6.05	\$5.15	\$5.01	\$0.77	\$1.12	\$1.04
The Cooper Corp	5.78	6.50	6.50	6.50	5.46	(Zones 1-5)				
Dayton Rubber Mfg	5.78	6.50	6.50	6.50	6.16	4.90				
Dunlop Tire	5.78	6.50	6.50	6.50	5.05	(All others)				
Falls Rubber Corp	5.78	6.50	6.50	6.50	5.01					
Firestone Tire	5.78	6.50	6.50	6.50	6.14					
Fisk Rubber Corp	5.78	6.50	6.50	6.50	6.31					
General Tire	5.78	6.50	6.50	6.50	6.14					
B. F. Goodrich Co	5.78	6.50	6.50	6.50	6.14					
General Tire	5.78	6.50	6.50	6.50	6.14					
Hicks Rubber Co	5.78	6.50	6.50	6.50	6.14					
Kelly-Springfield	5.78	6.50	6.50	6.50	6.14					
Lee Tire & Rubber	5.78	6.50	6.50	6.50	6.14					
Mohawk	5.78	6.50	6.50	6.50	6.14					
Norwalk Tire	5.78	6.50	6.50	6.50	6.14					
Pennsylvania	5.78	6.50	6.50	6.50	6.14					
F. G. Schenuit	5.78	6.50	6.50	6.50	6.14					
Seiberling Rubber	5.78	6.50	6.50	6.50	6.14					
U. S. Rubber Prod	5.78	6.50	6.50	6.50	6.14					
U. S. Tire Dealers	5.78	6.50	6.50	6.50	6.14					

EXHIBIT A (P. 11)

SIZE: 5.25 BY 18 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	...	...	...	...	\$7.47	\$6.95	\$6.17	\$0.93	\$1.36	\$1.17
The Cooper Corp	\$7.23	...	\$8.12	\$8.12	...	6.09	(Zones 1-5)			
Dayton Rubber Mfg	7.23	...	8.12	8.12	...	7.76	6.30			
Dunlop Tire	7.23	...	...	...	...	...	(All others)			
Falls Rubber Corp	7.23	...	8.12	8.12	...	...	Column 11	Column 12		
Firestone Tire	7.23	\$7.66	8.12	8.12	...	6.28	Number of tires pur- chased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37		
Fisk Rubber Corp	7.23	7.66	8.12	8.12	...	6.17				
General Tire	7.23	7.66	8.12	8.12	...	7.69				
B. F. Goodrich Co	7.23	7.66	8.12	8.12	...	6.72	1.872	1,342		
Goodyear Tire	7.23	7.66	8.12	8.12	...	7.20				
Hicks Rubber Co	...	...	...	...	...	7.39	Damages sustained	Damages sustained		
Kelly-Springfield	7.23	7.66	8.12	8.12	...	7.49	on such purchases	on such purchases		
Lee Tire & Rubber	7.23	7.66	8.12	8.12	...	7.24	(1,872X\$0.93)	(1,342X\$1.36)		
Mohawk	...	...	8.12	8.12	...	7.68	\$1,740.96	\$1,825.12		
Norwalk Tire	7.23	...	8.12	8.12	...	8.49				
Pennsylvania	7.23	7.66	8.12	8.12	...	6.54				
F. G. Schenuit	7.23	...	...	...	...	9.10				
Seiberling Rubber	7.23	7.66	8.12	8.12	...	6.40				
U. S. Rubber Prod	7.23	...	8.12	8.12	...	6.30				
U. S. Tire Dealers	...	7.66	...	...	...	...

EXHIBIT A (P. 12)

SIZE: 5.25 BY 19 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$6.40	\$5.82	\$5.31	\$0.73	\$1.09	\$1.09
The Cooper Corp	\$6.04	.....	\$6.78	\$6.78	.....	5.69	.....	.....	.....	.....
Dayton Rubber Mfg	6.04	.....	6.78	6.78	.....	6.43	.....	.....	.....	.....
Dunlop Tire	6.04	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	6.04	.....	.....	.....	.....	.....	.....	.....	.....	.....
Firestone Tire	6.04	\$6.40	6.78	6.78	.....	5.31	.....	.....	.....	.....
Fisk Rubber Corp	6.04	6.40	6.78	6.78	.....	5.19	.....	.....	.....	.....
General Tire	6.04	6.40	6.78	6.78	.....	6.34	.....	.....	.....	.....
B. F. Goodrich Co	6.04	6.40	6.78	6.78	.....	6.21	.....	.....	.....	.....
Goodyear Tire	6.04	6.40	6.78	6.78	.....	7.52	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	6.55	.....	.....	.....	.....
Kelly-Springfield	6.04	6.40	6.78	6.78	.....	6.16	.....	.....	.....	.....
Lee Tire & Rubber	6.04	6.40	6.78	6.78	.....	5.91	.....	.....	.....	.....
Mohawk	.....	.....	6.78	6.78	.....	6.34	.....	.....	.....	.....
Norwalk Tire	6.04	.....	6.78	6.78	.....	.....	.....	.....	.....	.....
Pennsylvania	6.04	6.40	6.78	6.78	.....	6.02	.....	.....	.....	.....
F. G. Schenuit	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seiberling Rubber	6.04	6.40	.....	.....	.....	.....	.....	.....	.....	.....
U. S. Rubber Prod	6.04	.....	6.73	6.78	.....	5.30	.....	.....	.....	.....
U. S. Tire Dealers	.....	6.40	.....	.....	.....	.....	.....	.....	.....	.....

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

6

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

6

Damages sustained on such purchases

(6X\$0.73)

\$4.38

(6X\$1.09)

\$6.54

EXHIBIT A (P. 13)

SIZE: 5.25 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$8.05	\$7.55	\$6.51	\$1.17	\$1.63	\$1.54
The Cooper Corp	\$7.68	....	\$8.63	\$8.63	....	6.36	Column 11			
Dayton Rubber Mfg	7.68	....	8.63	8.63	....	8.26	Column 12			
Dunlop Tire	....	....	....	....	....	....	Number of tires pur- chased during period 10/1/36 to 3/31/37			
Falls Rubber Corp	7.68	....	....	....	....	....	19			
Firestone Tire	7.68	\$8.14	8.63	8.63	....	6.51	25			
Fisk Rubber Corp	....	....	....	....	....	....	Damages sustained			
General Tire	7.68	8.14	8.63	8.63	....	7.96	on such purchases			
B. F. Goodrich Co	7.68	8.14	8.63	8.63	....	7.74	Damages sustained			
Goodyear Tire	7.68	8.14	8.63	8.63	....	....	(19X\$1.17)			
Hicks Rubber Co	....	....	....	....	....	7.56	on such purchases			
Kelly-Springfield	7.68	8.14	8.63	8.63	....	7.66	(\$22.23)			
Lee Tire & Rubber	7.68	8.14	8.63	8.63	....	7.52	(25X\$1.63)			
Mohawk	....	....	8.63	8.63	....	7.92	\$40.75			
Norwalk Tire	7.68	....	8.63	8.63	....	....		
Pennsylvania	7.68	8.14	8.63	8.63	....	7.57				
F. G. Schenuit	....	....	....	....	....	....
Seiberling Rubber	7.68	8.14	....	....	....	....
U. S. Rubber Prod	7.68	....	8.63	8.63	....	7.44				
U. S. Tire Dealers	....	....	....	....	....	....

EXHIBIT A (P. 14)

SIZE: 5.50 BY 16 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/21/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/20/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$6.34	\$5.79	\$4.77	\$1.49	\$1.87	\$1.57
The Cooper Corp	....	....	....	....	....	....	....	....	....	....
Dayton Rubber Mfg	....	....	\$7.04	\$7.04	....	6.70	....	....	....	....
Dunlop Tire	....	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	....	....	7.04	7.04	....	5.34	....	....	....	....
Firestone Tire	\$6.26	\$6.64	7.04	7.04	....	4.77	....	....	....	17
Fisk Rubber Corp	....	....	....	....	....	5.02	....	....	....	....
General Tire	....	6.64	7.04	7.04	....	6.67	....	....	....	....
B. F. Goodrich Co	6.26	6.64	7.04	7.04	....	5.28	....	....	....	....
Goodyear Tire	6.26	6.64	7.04	7.04	....	7.82	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	6.74	....	....	....	....
Kelly-Springfield	....	6.64	7.04	7.04	....	7.16	....	....	....	....
Lee Tire & Rubber	....	6.64	7.04	7.04	....	5.58	....	....	....	....
Mohawk	....	....	7.04	7.04	....	6.66	....	....	....	....
Norwalk Tire	....	....	....	....	....	7.37	....	....	....	....
Pennsylvania	....	6.64	7.04	7.04	....	5.96	....	....	....	....
F. G. Schenuit	....	....	....	....	....	....	....	....	....	....
Scibeling Rubber	6.26	6.64	7.04	7.04	....	5.14	....	....	....	....
U. S. Rubber Prod	6.26	....	7.04	7.04	....	5.56	....	....	....	....
U. S. Tire Dealers	....	6.64	....	....	....	....	....	....	....	....

Column 11
Number of tires purchased during period 10/1/36 to 3/31/37

Column 12
Number of tires purchased during period 4/1/37 to 9/30/37

Damages sustained on such purchases (9X\$1.49) \$13.41
Damages sustained on such purchases (17X\$1.87) \$31.79

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$6.50	\$5.80	\$5.31	\$1.00	\$1.38	\$1.19
The Cooper Corp	\$6.31	.....	\$7.09	\$7.09	.....	6.01	.....	.....	.....	.....
Dayton Rubber Mfg	6.31	.....	7.09	7.09	.....	6.72	.....	.....	.....	.....
Dunlop Tire	6.31	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	6.31	.....	7.09	7.09	.....	6.06	.....	.....	.....	.....
Firestone Tire	6.31	\$6.69	7.09	7.09	.....	5.31	.....	.....	.....	.....
Fisk Rubber Corp	6.31	6.69	7.09	7.09	.....	5.51	.....	.....	.....	.....
General Tire	6.31	6.69	7.09	7.09	.....	6.67	.....	.....	.....	.....
B. F. Goodrich Co	6.31	6.69	7.09	7.09	.....	5.37	.....	.....	.....	.....
Goodyear Tire	6.31	6.69	7.09	7.09	.....	4.97	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	7.30	.....	.....	.....	.....
Kelly-Springfield	6.31	6.69	7.09	7.09	.....	7.28	.....	.....	.....	.....
Lee Tire & Rubber	6.31	6.69	7.09	7.09	.....	6.29	.....	.....	.....	.....
Mohawk	.....	.....	7.09	7.09	.....	6.35	.....	.....	.....	.....
Norwalk Tire	6.31	.....	7.09	7.09	.....	7.38	.....	.....	.....	.....
Pennsylvania	6.31	6.69	7.09	7.09	.....	5.77	.....	.....	.....	.....
F. G. Schenuit	6.31	.....	.....	.....	.....	7.91	.....	.....	.....	.....
Seiberling Rubber	6.31	6.69	7.09	7.09	.....	5.30	.....	.....	.....	.....
U. S. Rubber Prod	6.31	.....	7.09	7.09	.....	5.58	.....	.....	.....	.....
U. S. Tire Dealers	.....	6.69	.....	.....	.....	.....	.....	.....	.....	.....

Column 11

Number of tires pur-
chased during period
10/1/36 to 3/31/37

526

735

Damages sustained
on such purchases
(526X\$1.00)
\$526.00

Damages sustained
on such purchases
(735X\$1.38)
\$1,014.30

EXHIBIT A (P. 16)

SIZE: 5.50 BY 17 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	\$7.57	\$8.50	\$8.50	\$8.50	\$7.79	\$7.09	\$6.47	\$1.10	\$1.55	\$1.32
The Cooper Corp.						7.05		Column 11	Column 12	
Dayton Rubber Mfg						8.10		Number of tires purchased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	
Dunlop Tire	7.57									
Falls Rubber Corp	7.57									
Firestone Tire	7.57	\$8.02	8.50	8.50		7.19				7.127
Fisk Rubber Corp	7.57	8.02	8.50	8.50		6.47				
General Tire	7.57	8.02	8.50	8.50		6.42				
B. F. Goodrich Co	7.57	8.02	8.50	8.50		8.02		Damages sustained	Damages sustained	
Goodyear Tire	7.57	8.02	8.50	8.50		6.92		on such purchases	on such purchases	(7.127X\$1.55)
Hicks Rubber Co						7.15		(7.454X\$1.10)		\$11,046.85
Kelly-Springfield	7.57	8.02	8.50	8.50		8.16		\$8,199.40		
Lee Tire & Rubber	7.57	8.02	8.50	8.50		8.70				
Mohawk						7.71				
Norwalk Tire	7.57					7.62				
Pennsylvania	7.57					8.86				
F. G. Schenuit	7.57	8.02	8.50	8.50		6.66				
Seiberling Rubber	7.57					9.49				
U. S. Rubber Prod	7.57	8.02	8.50	8.50		6.38				
U. S. Tire Dealers						6.80				

EXHIBIT A (P. 17)

SIZE: 5.50 BY 18 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$6.85	\$6.25	\$5.73	\$0.90	\$1.30	\$1.11.
The Cooper Corp	\$6.64	....	\$7.46	\$7.46	....	6.11 (Zones 1-5)	....	....	....	....
Dayton Rubber Mfg	6.64	....	7.46	7.46	....	7.03	\$5.74	....	....	....
Dunlop Tire	6.64	....	....	....	....	....	(All others)	....	....	....
Falls Rubber Corp	6.64	....	7.46	7.46	....	5.77	....	....	....	....
Firestone Tire	6.64	\$7.04	7.46	7.46	....	5.74	....	....	....	....
Fisk Rubber Corp	6.64	7.04	7.46	7.46	....	5.73	....	....	....	....
General Tire	6.64	7.04	7.46	7.46	....	7.03	....	....	....	....
B. F. Goodrich Co	6.64	7.04	7.46	7.46	....	6.67	....	....	....	....
Goodyear Tire	6.64	7.04	7.46	7.46	....	8.32	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	6.64	....	....	....	....
Kelly-Springfield	6.64	7.04	7.46	7.46	....	6.86	....	....	....	....
Lee Tire & Rubber	6.64	7.04	7.46	7.46	....	6.20	....	....	....	....
Mohawk	....	....	7.46	7.46	....	7.01	....	....	....	....
Norwalk Tire	6.64	....	7.46	7.46	....	7.76	....	....	....	....
Pennsylvania	6.64	7.04	7.46	7.46	....	6.44	....	....	....	....
F. G. Schenuit	6.64	....	....	....	....	8.32	....	....	....	....
Seiberling Rubber	6.64	7.04	7.46	7.46	....	5.76	....	....	....	....
U. S. Rubber Prod	6.64	....	7.46	7.46	....	5.76	....	....	....	....
U. S. Tire Dealers	....	7.04	....	....	....	....	....	....	....	....

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37

7

16

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37

Damages sustained on such purchases
(7X\$0.90)
\$6.30

(16X\$1.30)
\$20.80

105

104

103

EXHIBIT A (P. 18)

SIZE: 5.50 BY 18 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Differences be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$8.17	\$7.80	\$6.84	\$1.09	\$1.57	\$1.26
The Cooper Corp	\$8.00	....	\$8.99	\$8.99	....	7.18 (Zones 1 to 5)				
Dayton Rubber Mfg	8.00	....	8.99	8.99	....	8.55	5)			
Dunlop Tire	8.00	....	....	....	....	....	6.91			
Falls Rubber Corp	8.00	....	8.99	8.99	....	....	6.86 (All others)			
Firestone Tire	8.00	8.48	8.99	8.99	....	6.91				
Fisk Rubber Corp	8.00	8.48	8.99	8.99	....	6.84				
General Tire	8.00	8.48	8.99	8.99	....	8.44				
B. F. Goodrich Co	8.00	8.48	8.99	8.99	....	8.01				
Goodyear Tire	8.00	8.48	8.99	8.99	....	10.00	185			154
Hicks Rubber Co	....	....	....	....	....	8.16				
Kelly-Springfield	8.00	8.48	8.99	8.99	....	8.15				
Lee Tire & Rubber	8.00	8.48	8.99	8.99	....	7.89				
Mohawk	....	....	8.99	8.99	....	8.43	(185X\$1.09)			(154X\$1.57)
Norwalk Tire	8.00	....	8.99	8.99	....	9.32	\$201.65			\$241.73
Pennsylvania	8.00	8.48	8.99	8.99	....	7.68				
F. G. Schennit	8.00	....	....	....	....	9.99				
Sziberling Rubber	8.00	8.48	8.99	8.99	....	7.03				
U. S. Rubber Prod	8.00	....	8.99	99	....	7.04				
U. S. Tire Dealers	....	8.48	....	....	....	....

SIZE: 5.50 BY 19 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period, 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period, 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$6.98	\$6.47	\$5.90	\$0.85	\$1.26	\$1.08
The Cooper Corp	\$6.75	....	\$7.59	\$7.59	....	6.51	....	....	....	....
Dayton Rubber Mfg	6.75	....	7.59	7.59	....	7.16	....	....	....	....
Dunlop Tire	6.75	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	6.75	....	7.59	7.59	....	6.15	....	....	....	....
Firestone Tire	6.75	\$7.16	7.59	7.59	....	5.90	....	....	....	....
Fisk Rubber Corp	6.75	7.16	7.59	7.59	....	5.90	....	....	....	....
General Tire	6.75	7.16	7.59	7.59	....	7.16	....	....	....	....
B. F. Goodrich Co	6.75	7.16	7.59	7.59	....	7.00	....	....	....	....
Goodyear Tire	6.75	7.16	7.59	7.59	....	8.49	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	6.86	....	....	....	....
Kelly-Springfield	6.75	7.16	7.59	7.59	....	6.97	....	....	....	....
Lee Tire & Rubber	6.75	7.16	7.59	7.59	....	6.63	....	....	....	....
Mohawk	....	....	7.59	7.59	....	7.16	....	....	....	....
Norwalk Tire	6.75	....	7.59	7.59	....	7.91	....	....	....	....
Pennsylvania	6.75	7.16	7.59	7.59	....	6.56	....	....	....	....
F. G. Schennit	6.75	....	....	....	....	8.48	....	....	....	....
Seiberling Rubber	6.75	7.16	7.59	7.59	....	5.97	....	....	....	....
U. S. Rubber Prod	6.75	....	7.59	7.59	....	5.98	....	....	....	....
U. S. Tire Dealers	....	7.16	....	....	....	....	....	....	....	....

37

Column 12 *

Number of tires purchased during period 10/1/36 to 3/31/37

8

2

Damages sustained on such purchases (8X\$0.85) \$6.80

Damages sustained on such purchases (2X\$1.26) \$2.52

109

110

111

EXHIBIT A (P. 20)

SIZE: 5.50 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/23/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	8.22	8.22	8.22	8.22	8.40	7.90	7.03	\$1.00	\$1.49	\$1.18
The Cooper Corp	8.22	8.22	8.22	8.22	8.22	7.63 (Zones 1-5)				
Dayton Rubber Mfg	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Dunlop Tire	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Falls Rubber Corp	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Firestone Tire	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Fisk Rubber Corp	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
General Tire	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
B. F. Goodrich Co	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Goodyear Tire	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Hicks Rubber Co	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Kelly-Springfield	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Lee Tire & Rubber	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Mohawk	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Norwalk Tire	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Pennsylvania	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
F. G. Schenutt	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
Seiberling Rubber	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
U. S. Rubber Prod	8.22	8.22	8.22	8.22	8.22	8.77	7.22			
U. S. Tire Dealers	8.22	8.22	8.22	8.22	8.22	8.77	7.22			

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

40

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

18

Damages sustained on such purchases

(40X\$1.49)

\$59.60

Damages sustained on such purchases

(18X\$1.00)

\$18.00

SIZE: 6.00 BY 16 (PASSENGER, 4 PLY)

117

EXHIBIT A (P. 22)

SIZE: 6.00 BY 16 (PASSENGER, 6 PLY)

Company	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	Opening of 8/17/36 for period 10/1/36 to 3/31/37	Opening of 1/25/37 for period 4/1/37 to 9/30/37	Opening of 7/21/37 for period 10/1/37 to 3/31/38	Opening of 9/20/37 for period 10/1/37 to 3/31/38	Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Opening of 2/7/38 for period 4/1/38 to 9/30/38	Award prices 4/1/38 to 9/30/38	Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$8.51	\$7.56	\$6.85	\$1.73	\$2.24	\$1.66
The Cooper Corp	....	....	....	....	....	7.61	....	....	....	....
Dayton Rubber Mfg	\$8.58	....	\$9.64	\$9.64	....	9.09	....	....	....	....
Dunlop Tire	8.58	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	....	....	9.64	9.64	....	7.38	....	....	....	....
Firestone Tire	8.58	9.09	9.64	9.64	....	6.90	....	....	....	....
Fisk Rubber Corp	....	....	....	....	....	7.11	6.531	....	7.682	....
General Tire	8.58	9.09	9.64	9.64	....	8.92	....	....	....	....
B. F. Goodrich Co	8.58	9.09	9.64	9.64	....	7.13	....	....	....	....
Goodyear Tire	8.58	9.09	9.64	9.64	....	6.85	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	8.68	....	....	....	....
Kelly-Springfield	8.58	9.09	9.64	9.64	....	9.77	....	....	....	....
Lee Tire & Rubber	8.58	9.09	9.64	9.64	....	7.89	....	....	....	....
Mohawk	....	....	9.64	9.64	....	8.85	....	....	....	....
Norwalk Tire	....	....	9.64	9.64	....	9.86	....	....	....	....
Pennsylvania	8.58	9.09	9.64	9.64	....	8.00	....	....	....	....
F. G. Schenuit	8.58	....	....	....	....	10.57	....	....	....	....
Seiberling Rubber	8.58	9.09	9.64	9.64	....	7.02	....	....	....	....
U. S. Rubber Prod	8.58	....	9.64	9.64	....	7.10	....	....	....	....
U. S. Tire Dealers	....	9.09	....	....	....	....	....	....	....	....
								Number of tires purchased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	
								6,531	7,682	
								Damages sustained on such purchases	Damages sustained on such purchases	
								(6,531X\$1.73)	(7,682X\$2.24)	
								\$11,238.63	\$17,267.68	

EXHIBIT A (P. 23)

SIZE: 6.00 BY 17 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	...	...	...	...	\$7.41	\$6.90	\$5.68	\$1.60	\$2.04	\$1.73
The Cooper Corp	\$7.28	...	\$8.18	\$8.18	...	6.57	...	...	...	...
Dayton Rubber Mfg	7.28	...	8.18	8.18	...	7.66	...	...	...	...
Dunlop Tire	7.28	...	...	...	...	...	...	...	...	...
Falls Rubber Corp	7.28	...	8.18	8.18	...	6.04	...	...	...	...
Firestone Tire	7.28	\$7.72	8.18	8.18	...	5.94	...	...	...	...
Fisk Rubber Corp	7.28	7.72	8.18	8.18	...	5.98	...	...	...	...
General Tire	7.28	7.72	8.18	8.18	...	7.74	...	...	...	...
B. F. Goodrich Co	7.28	7.72	8.18	8.18	...	7.57	...	...	...	...
Goodyear Tire	7.28	7.72	8.18	8.18	...	5.32	...	...	...	...
Hicks Rubber Co	...	...	...	...	...	7.78	...	...	...	...
Kelly-Springfield	7.28	7.72	8.18	8.18	...	7.44	...	...	...	...
Lee Tire & Rubber	...	...	...	...	...	...	...	...	...	...
Mohawk	...	...	8.18	8.18	...	...	...	...	...	...
Norwalk Tire	7.28	...	8.18	8.18	...	8.55	...	...	...	...
Pennsylvania	7.28	7.72	8.18	8.18	...	6.97	...	...	...	...
F. G. Schenuit	7.28	...	...	...	...	...	...	...	...	...
Seiberling Rubber	7.28	7.72	8.18	8.18	...	5.68	...	...	...	...
U. S. Rubber Prod	7.28	...	8.18	8.18	...	6.16	...	...	...	...
U. S. Tire Dealers	...	7.72	...	...	...	...	...	...	...	...

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37

14 20

Damages sustained Damages sustained
on such purchases on such purchases
(14X\$1.60) (20X\$2.04)
\$22.40 \$40.80

121

122

123

EXHIBIT A (P. 24)

SIZE: 6.00 BY 17. (PASSENGER, 6-PLY)

Company	Column 1 Opening of 8/1/36 for period to 3/31/37	Column 2 Opening of 4/1/37 for period to 9/30/37	Column 3 Opening of 7/21/37 for period to 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period to 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period to 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period to 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award prices	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$8.62	\$8.07	\$7.00	\$1.60	\$2.12	\$1.62
The Cooper Corp	\$8.60	....	\$9.67	\$9.67	....	7.77	Column 11			
Dayton Rubber Mfg	8.60	....	9.67	9.67	....	9.11	Column 12			
Dunlop Tire	8.60	....	....	....	....	....	Number of tires pur- chased during period 10/1/36 to 3/31/37			
Falls Rubber Corp	8.60	....	9.67	9.67	....	7.21	392			
Firestone Tire	8.60	\$9.12	9.67	9.67	....	7.25	361			
Fisk Rubber Corp	8.60	9.12	9.67	9.67	....	8.03	Damages sustained on such purchases			
General Tire	8.60	9.12	9.67	9.67	....	9.32	(392X\$1.60)			
B. F. Goodrich Co	8.60	9.12	9.67	9.67	....	9.10	on such purchases			
Goodyear Tire	8.60	9.12	9.67	9.67	....	9.66	(\$361X\$2.12)			
Hicks Rubber Co	....	....	....	....	....	8.82	\$627.20			
Kelly-Springfield	8.60	9.12	9.67	9.67	....	9.05	Damages sustained on such purchases			
Lee Tire & Rubber	8.60	9.12	9.67	9.67	....	8.35	(361X\$2.12)			
Mohawk	....	....	9.67	9.67	....	9.29	\$765.32			
Norwalk Tire	8.60	....	9.67	9.67	....	10.27				
Pennsylvania	8.60	9.12	9.67	9.67	....	8.10				
F. G. Schenuit	8.60	....	....	....	....	....
Seiberling Rubber	8.60	9.12	9.67	9.67	....	7.00				
U. S. Rubber Prod	8.60	....	9.67	9.67	....	7.86				
U. S. Tire Dealers	....	9.12	....	....	....	....

EXHIBIT A (P. 25)

SIZE: 6.00 BY 18 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	.....	.....	.....	.....	\$7.74	\$7.34	\$6.28	\$1.19	\$1.64	\$1.46
The Cooper Corp	\$7.47	....	\$8.40	\$8.40	....	6.80	Column 11 Number of tires purchased during period 10/1/36 to 3/31/37			
Dayton Rubber Mfg	7.47	....	8.40	8.40	....	7.80	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37			
Dunlop Tire	....	....	....	....	....	....	2	23		
Falls Rubber Corp	....	....	8.40	8.40	....	6.30				
Firestone Tire	7.47	\$7.92	8.40	8.40	....	6.28				
Fisk Rubber Corp	7.47	7.92	8.40	8.40	....	6.33				
General Tire	7.47	7.92	8.40	8.40	....	7.95				
B. F. Goodrich Co.	7.47	7.92	8.40	8.40	....	7.74				
Goodyear Tire	7.47	7.92	8.40	8.40	....	5.58				
Hicks Rubber Co	....	....	....	....	....	8.10				
Kelly-Springfield	7.47	7.92	8.40	8.40	....	7.64				
Lee Tire & Rubber	....	....	....	....	....	....
Mohawk	....	....	8.40	8.40	....	7.90				
Norwalk Tire	7.47	....	8.40	8.40	....	....		
Pennsylvania	7.47	7.92	8.40	8.40	....	....		
F. G. Schenuit	7.47	....	....	....	....	9.38				
Seiberling Rubber	7.47	7.92	8.40	8.40	....	6.29				
U. S. Rubber Prod	7.47	....	8.40	8.40	....	7.43				
U. S. Tire Dealers	....	7.92	....	....	....	....

43

127

128

129

EXHIBIT A (P. 26)

SIZE: 6.00 BY 18 (PASSENGER, 6 PLY)

Company	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	Opening of 8/17/36 for period 10/1/36 to 3/31/37	Opening of 1/25/37 for period 4/1/37 to 9/30/37	Opening of 7/21/37 for period 10/1/37 to 3/31/38	Opening of 9/20/37 for period 10/1/37 to 3/31/38	Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Opening of 2/7/38 for period 4/1/38 to 9/30/38	Award prices 4/1/38 to 9/30/38	Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Difference between 10/1/37 to 3/31/38 price award price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$9.30	\$8.95	\$7.61	\$1.23	\$1.76	\$1.69
The Cooper Corp	\$8.84	....	\$9.93	\$9.93	....	8.00	....	....	....	....
Dayton Rubber Mfg	8.84	....	9.93	9.93	....	9.32	....	....	....	....
Dunlop Tire	8.84	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	8.84	....	9.93	9.93	....	7.54	....	....	....	....
Firestone Tire	8.84	....	9.93	9.93	....	7.61	....	....	....	....
Fisk Rubber Corp	8.84	\$9.37	9.93	9.93	....	8.51	....	....	....	....
General Tire	8.84	9.37	9.93	9.93	....	9.50	....	....	....	....
B. F. Goodrich Co	8.84	9.37	9.93	9.93	....	9.28	....	....	....	....
Goodyear Tire	8.84	9.37	9.93	9.93	....	10.39	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	9.01	....	....	....	....
Kelly-Springfield	8.84	9.37	9.93	9.93	....	9.17	....	....	....	....
Lee Tire & Rubber	8.84	9.37	9.93	9.93	....	8.89	....	....	....	....
Mohawk	....	....	9.93	9.93	....	9.48	....	....	....	....
Norwalk Tire	8.84	....	9.93	9.93	....	10.48	....	....	....	....
Pennsylvania	8.84	9.37	9.93	9.93	....	8.74	....	....	....	....
F. G. Schenuit	8.84	....	....	....	....	10.57	....	....	....	....
Seiberling Rubber	8.84	9.37	9.93	9.93	....	7.67	....	....	....	....
U. S. Rubber Prod	8.84	....	9.93	9.93	....	8.91	....	....	....	....
U. S. Tire Dealers	....	9.37	....	....	....	....	....	....	....	....

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

127

368

Damages sustained on such purchases (127X\$1.23) \$156.21

Damages sustained on such purchases (368X\$1.76) \$647.68

SIZE: 6.00 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/2/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$9.51	\$9.10	\$7.96	\$1.17	\$1.72	\$1.55
The Cooper Corp	\$9.13	....	\$10.26	\$10.26	....	8.50	....	....	....	....
Dayton Rubber Mfg	9.13	....	10.26	10.26	....	9.09	....	....	....	....
Dunlop Tire	9.13	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	9.13	....	10.26	10.26	....	8.02	....	....	....	....
Firestone Tire	9.13	\$9.68	10.26	10.26	....	7.96	....	....	....	....
Fisk Rubber Corp	9.13	9.68	10.26	10.26	....	8.70	....	....	....	....
General Tire	9.13	9.68	10.26	10.26	....	9.76	....	....	....	....
B. F. Goodrich Co	9.13	9.68	10.26	10.26	....	9.82	....	....	....	....
Goodyear Tire	9.13	9.68	10.26	10.26	....	11.56	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	9.30	....	....	....	....
Kelly-Springfield	9.13	9.68	10.26	10.26	....	9.42	....	....	....	....
Lee Tire & Rubber	9.13	9.68	10.26	10.26	....	9.24	....	....	....	....
Mohawk	....	....	10.26	10.26	....	9.74	....	....	....	....
Norwalk Tire	9.13	....	10.26	10.26	....	10.77	....	....	....	....
Pennsylvania	9.13	9.68	10.26	10.26	....	8.94	....	....	....	....
F. G. Schenuit	9.13	....	....	....	....	11.54	....	....	....	....
Seiberling Rubber	9.13	9.68	10.26	10.26	....	7.96	....	....	....	....
U. S. Rubber Prod	9.13	....	10.26	10.26	....	9.15	....	....	....	....
U. S. Tire Dealers	....	9.68	....	....	....	....	....	....	....	....

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37
45

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37
58

Damages sustained
on such purchases
(45X\$1.17)
\$52.65

Damages sustained
on such purchases
(58X\$1.72)
\$99.76

133

134

135

EXHIBIT A (P. 28)

SIZE: 6.00 BY .20 (PASSENGER, 6 PLY)

[illegible]

EXHIBIT A (P. 29)

SIZE: 6.00 BY 21 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 5/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	9.53	10.10	10.71	10.71	10.10	9.81	8.50	1.03	1.60	1.60
The Cooper Corp	9.53	10.10	10.71	10.71	10.10	8.45				
Dayton Rubber Mfg	9.53	10.10	10.71	10.71	10.10	10.00				
Dunlop Tire	9.53	10.10	10.71	10.71	10.10	10.00				
Falls Rubber Corp	9.53	10.10	10.71	10.71	10.10	8.70				
Firestone Tire	9.53	10.10	10.71	10.71	10.10	10.00				
Fisk Rubber Corp	9.53	10.10	10.71	10.71	10.10	10.00				
General Tire	9.53	10.10	10.71	10.71	10.10	10.00				
B. F. Goodrich Co	9.53	10.10	10.71	10.71	10.10	10.00				
Goodyear Tire	9.53	10.10	10.71	10.71	10.10	10.00				
Hicks Rubber Co	9.53	10.10	10.71	10.71	10.10	10.00				
Kelly-Springfield	9.53	10.10	10.71	10.71	10.10	10.00				
Lee Tire & Rubber	9.53	10.10	10.71	10.71	10.10	10.00				
Mohawk	9.53	10.10	10.71	10.71	10.10	10.00				
Norwalk Tire	9.53	10.10	10.71	10.71	10.10	10.00				
Pennsylvania	9.53	10.10	10.71	10.71	10.10	10.00				
F. G. Schenuit	9.53	10.10	10.71	10.71	10.10	10.00				
Seiberling Rubber	9.53	10.10	10.71	10.71	10.10	10.00				
U. S. Rubber Prod	9.53	10.10	10.71	10.71	10.10	10.00				
U. S. Tire Dealers	9.53	10.10	10.71	10.71	10.10	10.00				

47

139

140

141

Number of tires purchased during period 4/1/37 to 9/30/37
 Number of tires purchased during period 10/1/36 to 3/31/37
 Damages sustained on such purchases
 Damages sustained on such purchases
 (7X\$1.60)
 (14X\$1.03)
 \$14.42
 \$11.20

EXHIBIT A (P. 30)

SIZE: 6.25 BY 16 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sear, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sear, Roebuck & Co	...	...	...	...	\$7.60	\$6.90	\$6.12	\$1.99	\$2.48	\$1.48
The Cooper Corp	...	...	...	...	...	...	...	...	...	...
Dayton Rubber Mfg	\$8.11	...	\$9.12	\$9.12	...	8.58	...	...	...	...
Dunlop Tire	8.11	...	...	...	...	...	...	...	...	...
Falls Rubber Corp	...	...	9.12	9.12	...	...	...	...	...	...
Firestone Tire	8.11	\$8.60	9.12	9.12	...	...	...	...	...	...
Fisk Rubber Corp	...	...	...	...	...	...	...	...	...	...
General Tire	8.11	8.60	9.12	9.12	...	6.23	...	...	...	...
B. F. Goodrich Co	8.11	8.60	9.12	9.12	...	8.46	...	...	...	...
Goodyear Tire	8.11	8.60	9.12	9.12	...	7.04	...	...	...	...
Hicks Rubber Co	...	...	...	...	...	6.18	...	...	...	...
Kelly-Springfield	8.11	8.60	9.12	9.12	...	7.94	...	...	...	...
Lee Tire & Rubber	8.11	8.60	9.12	9.12	...	...	...	...	...	...
Mohawk	...	...	...	...	...	...	...	...	...	...
Norwalk Tire	8.11	...	9.12	9.12	...	8.40	...	...	...	...
Pennsylvania	8.11	8.60	9.12	9.12	...	...	...	...	...	...
F. G. Schenuit	...	...	...	...	...	...	...	...	...	...
Seiberling Rubber	8.11	8.60	9.12	9.12	...	...	...	...	...	...
U. S. Rubber Prod	8.11	...	9.12	9.12	...	6.12	...	...	...	...
U. S. Tire Dealers	...	8.60	...	...	...	6.25	...	...	...	...

Column 11
Number of tires purchased during period 10/1/36 to 3/31/37
30

Column 12
Number of tires purchased during period 4/1/37 to 9/30/37
100

Damages sustained on such purchases (100X\$2.48)
\$248.00

Damages sustained on such purchases (30X\$1.99)
\$59.70

SIZE: 6.25 BY 16 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	.....	.....	.....	.....	\$9.13	\$8.15	\$7.36	\$2.23	\$2.81	\$1.77
The Cooper Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dayton Rubber Mfg	\$9.59	.....	\$10.78	\$10.78	.....	10.18	.....	.....	.....	.....
Dunlop Tire	9.59	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	.....	.....	10.78	10.78	.....	.....	.....	.....	.....	.....
Firestone Tire	9.59	\$10.17	10.78	10.78	.....	.....	.....	.....	.....	.....
Fisk Rubber Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
General Tire	9.59	10.17	10.78	10.78	.....	7.57	.....	.....	.....	.....
B. F. Goodrich Co	9.59	10.17	10.78	10.78	.....	9.96	.....	.....	.....	.....
Goodyear Tire	9.59	10.17	10.78	10.78	.....	8.28	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	8.07	.....	.....	.....	.....
Kelly-Springfield	9.59	10.17	10.78	10.78	.....	9.05	.....	.....	.....	.....
Lee Tire & Rubber	9.59	10.17	10.78	10.78	.....	.....	.....	.....	.....	.....
Mohawk	.....	.....	10.78	10.78	.....	9.89	.....	.....	.....	.....
Norwalk Tire	9.59	.....	10.78	10.78	.....	.....	.....	.....	.....	.....
Pennsylvania	9.59	10.17	10.78	10.78	.....	.....	.....	.....	.....	.....
F. G. Schenuit	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seiberling Rubber	9.59	10.17	10.78	10.78	.....	7.36	.....	.....	.....	.....
U. S. Rubber Prod	9.59	.....	10.78	10.78	.....	8.15	.....	.....	.....	.....
U. S. Tire Dealers	.....	10.17	.....	.....	.....	.....	.....	.....	.....	.....

49

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37
626

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37
1,098

Damages sustained
on such purchases
(626X\$2.23)
\$1,395.98

Damages sustained
on such purchases
(1,098X\$2.81)
\$3,085.38

145

146

147

EXHIBIT A (P. 32)

SIZE: 6.50 BY 16 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/1/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co.	....	....	....	....	\$8.38	\$7.62	\$6.44	\$2.57	\$3.11	\$1.94
The Cooper Corp	....	....	....	....	....	7.42	....	....	....	....
Dayton Rubber Mfg	\$9.01	....	\$10.12	\$10.12	....	9.53	....	....	....	....
Dunlop Tire	9.01	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	....	....	10.12	10.12	....	7.42	....	....	....	....
Firestone Tire	9.01	\$9.55	10.12	10.12	....	6.44	....	....	....	....
Fisk Rubber Corp	....	....	....	....	....	6.68	....	....	....	....
General Tire	9.01	9.55	10.12	10.12	....	9.35	....	....	....	....
B. F. Goodrich Co	9.01	9.55	10.12	10.12	....	7.76	....	....	....	....
Goodyear Tire	9.01	9.55	10.12	10.12	....	6.67	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	8.56	....	....	....	....
Kelly-Springfield	9.01	9.55	10.12	10.12	....	10.19	....	....	....	....
Lee Tire & Rubber	9.01	9.55	10.12	10.12	....	7.27	....	....	....	....
Mohawk	....	....	10.12	10.12	....	9.26	....	....	....	....
Norwalk Tire	9.01	....	10.12	10.12	....	10.29	....	....	....	....
Pennsylvania	9.01	9.55	10.12	10.12	....	7.88	....	....	....	....
F. G. Schenuit	9.01	....	....	....	....	11.06	....	....	....	....
Seiberling Rubber	9.01	9.55	10.12	10.12	....	6.38	....	....	....	....
U. S. Rubber Prod	9.01	....	10.12	10.12	....	6.90	....	....	....	....
U. S. Tire Dealers	....	9.55	....	....	....	....	....	....	....	....
								Number of tires purchased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	
								43	88	
								Damages sustained on such purchases (43X\$2.57)	Damages sustained on such purchases (88X\$3.11)	
								\$110.51	\$273.68	

EXHIBIT A (P. 33)

SIZE: 6.50 BY 16 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	....	....	....	....	\$9.48	\$8.44	\$7.64	\$2.26	\$2.85	\$1.84
The Cooper Corp	....	....	....	....	....	8.60	Column 11			
Dayton Rubber Mfg	\$9.90	....	\$11.12	\$11.12	....	10.51	Column 12			
Dunlop Tire	9.90	....	....	....	....	....	Number of tires purchased during period 4/1/37 to 9/30/37			
Falls Rubber Corp	....	....	11.12	11.12	....	8.60	685			
Firestone Tire	9.90	\$10.49	11.12	11.12	....	7.64	909			
Fisk Rubber Corp	....	....	....	....	....	8.74	Damages sustained			
General Tire	9.90	10.49	11.12	11.12	....	10.28	on such purchases			
B. F. Goodrich Co	9.90	10.49	11.12	11.12	....	8.48	(685X\$2.26)			
Goodyear Tire	9.90	10.49	11.12	11.12	....	8.45	(909X\$2.85)			
Hicks Rubber Co	....	....	....	....	....	9.83	\$1,548.10			
Kelly-Springfield	9.90	10.49	11.12	11.12	....	11.20	Damages sustained			
Lee Tire & Rubber	9.90	10.49	11.12	11.12	....	8.76	on such purchases			
Mohawk	....	....	11.12	11.12	....	10.22	(685X\$2.26)			
Norwalk Tire	9.90	....	11.12	11.12	....	11.33	\$2,590.65			
Pennsylvania	9.90	10.49	11.12	11.12	....	8.91				
F. G. Schenuit	9.90	....	....	....	....	12.16				
Seiberling Rubber	9.90	10.49	11.12	11.12	....	7.73				
U. S. Rubber Prod	9.90	....	11.12	11.12	....	8.10				
U. S. Tire Dealers	....	10.49	....	....	....	....

EXHIBIT A (P. 35)

SIZE: 6.50 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$10.52	.....	.....	.....	\$10.63	\$9.97	\$8.92	\$1.60	\$2.23	\$1.71
The Cooper Corp	10.52	.....	\$11.82	\$11.82	.....	9.61	Column 11 Number of tires purchased during period 9/1/36 to 3/31/37 34			
Dayton Rubber Mfg	10.52	.....	11.82	11.82	.....	11.16	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37 34			
Dunlop Tire	10.52	.....	.....	.....	.....	.....	Damages sustained on such purchases, on such purchases (34X\$1.60) \$54.40			
Falls Rubber Corp	10.52	.....	11.82	11.82	.....	9.03	Damages sustained on such purchases, on such purchases (34X\$2.23) \$75.82			
Firestone Tire	10.52	\$11.15	11.82	11.82	.....	9.57				
Fisk Rubber Corp	10.52	11.15	11.82	11.82	.....	9.70				
General Tire	10.52	11.15	11.82	11.82	.....	11.54				
B. F. Goodrich Co	10.52	11.15	11.82	11.82	.....	11.93				
Goodyear Tire	10.52	11.15	11.82	11.82	.....	13.65				
Hicks Rubber Co	.....	.....	.....	.....	.....	10.93				
Kelly-Springfield	10.52	11.15	11.82	11.82	.....	11.18				
Lee Tire & Rubber	10.52	11.15	11.82	11.82	.....	10.35				
Mohawk	.....	.....	11.82	11.82	.....	11.49				
Norwalk Tire	10.52	.....	11.82	11.82	.....	12.72				
Pennsylvania	10.52	11.15	11.82	11.82	.....	9.99				
F. G. Schenuit	10.52	.....	.....	.....	.....	13.64				
Seiberling Rubber	10.52	11.15	11.82	11.82	8.92				
U. S. Rubber Prod	10.52	11.82	11.82	10.80				
U. S. Tire Dealers	11.15				

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EXHIBIT A (P. 36)

SIZE: 6.50 BY 20 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$11.00	\$10.42	\$9.70	\$0.95	\$1.59	\$1.30
The Cooper Corp	\$10.65	....	\$11.97	\$11.97	....	10.00	....	....	....	....
Dayton Rubber Mfg	10.65	....	11.97	11.97	....	11.29	....	....	....	....
Dunlop Tire	10.65	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	10.65	....	....	....	....	....	....	....	....	....
Firestone Tire	10.65	\$11.29	11.97	11.97	....	9.90	....	....	....	....
Fisk Rubber Corp	10.65	11.29	11.97	11.97	....	10.11	....	....	....	....
General Tire	10.65	11.29	11.97	11.97	....	11.66	....	....	....	....
B. F. Goodrich Co	10.65	11.29	11.97	11.97	....	12.04	....	....	....	....
Goodyear Tire	10.65	11.29	11.97	11.97	....	13.78	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	11.24	....	....	....	....
Kelly-Springfield	10.65	11.29	11.97	11.97	....	11.80	....	....	....	....
Lee Tire & Rubber	10.65	11.29	11.97	11.97	....	10.67	....	....	....	....
Mohawk	....	....	11.97	11.97	....	11.61	....	....	....	....
Norwalk Tire	10.65	....	11.97	11.97	....	12.84	....	....	....	....
Pennsylvania	10.65	11.29	11.97	11.97	....	10.34	....	....	....	....
F. G. Schenuit	10.65	....	....	....	....	13.77	....	....	....	....
Seiberling Rubber	10.65	11.29	11.97	11.97	....	9.70	....	....	....	....
U. S. Rubber Prod	10.65	....	11.97	11.97	....	10.92	....	....	....	....
U. S. Tire Dealers	....	11.29	....	....	....	....	....	....	....	....
								Column 11 Number of tires pur- chased during period 10/1/36 to 3/31/37	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37	
								100	197	
								Damages sustained on such purchases (100X\$0.95) \$95.00	Damages sustained on such purchases (197X\$1.59) \$313.23	

SIZE: 7.00 BY 15 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$9.08	\$8.07	\$7.12	\$2.33	\$2.90	\$1.96
The Cooper Corp	9.20	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37			
Dayton Rubber Mfg	\$9.45	\$10.62	\$10.62	10.05	Column 11 Number of tires pur- chased during period 10/1/36 to 3/31/37			
Dunkopf Tire	13			
Falls Rubber Corp	9.20	Damages sustained on such purchases (13X\$2.90) \$37.70			
Firestone Tire	9.45	\$10.02	10.62	10.62	....	8.00			
Fisk Rubber Corp	....	....	....	....	....	7.49
General Tire	9.45	....	....	....	....	....
B. F. Goodrich Co	9.45	10.02	10.62	10.62	....	8.63			
Goodyear Tire	9.45	10.02	10.62	10.62	....	11.47			
Hicks Rubber Co	....	....	....	....	....	9.98
Kelly-Springfield	9.45	10.02	10.62	10.62	....	10.54			
Lee Tire & Rubber	9.45	10.02	10.62	10.62	....	8.45			
Mghawk	....	....	10.62	10.62	....	9.77	
Norwalk Tire	9.45	....	10.62	10.62	....	10.81		
Pennsylvania	9.45	10.02	10.62	10.62	....	8.54			
F. G. Schenuit	....	....	....	....	....	....
Seiberling Rubber	9.45	10.02	10.62	10.62	7.12				
U. S. Rubber Prod	9.45	10.62	10.62	8.16				
U. S. Tire Dealers	10.02				

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164

165

EXHIBIT A (P. 39)

SIZE: 7.00 BY 16 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$9.43	\$8.12	\$7.28	\$2.46	\$3.04	\$2.15
The Cooper Corp	....	....	....	....	....	7.95	....	....	....	....
Dayton Rubber Mfg	\$9.74	....	\$10.94	\$10.94	....	10.38	....	....	....	....
Dunlop Tire	9.74	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	....	....	10.94	10.94	....	8.46	....	....	....	....
Firestone Tire	9.74	\$10.32	10.94	10.94	....	8.41	....	....	....	....
Fisk Rubber Corp	....	....	....	....	....	7.73	....	....	....	....
General Tire	9.74	10.32	10.94	10.94	....	10.09	....	....	....	....
B. F. Goodrich Co	9.74	10.32	10.94	10.94	....	8.98	....	....	....	....
Goodyear Tire	9.74	10.32	10.94	10.94	....	8.78	....	....	....	....
Hicks Rubber Co.	....	....	....	....	....	10.51	....	....	....	....
Kelly-Springfield	9.74	10.32	10.94	10.94	....	11.08	....	....	....	....
Lee Tire & Rubber	9.74	10.32	10.94	10.94	....	8.81	....	....	....	....
Mohawk	....	....	10.94	10.94	....	10.05	....	....	....	....
Norwalk Tire	9.74	....	10.94	10.94	....	11.13	....	....	....	....
Pennsylvania	9.74	10.32	10.94	10.94	....	8.86	....	....	....	....
F. G. Schenuit	....	....	....	....	....	1.00	....	....	....	....
Seiberling Rubber	9.74	10.32	10.94	10.94	....	7.28	....	....	....	....
U. S. Rubber Prod	9.74	....	10.94	10.94	....	8.84	....	....	....	....
U. S. Tire Dealers	....	10.32	....	....	....	....	....	....	....	....

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

1

73

Damages sustained on such purchases (1X\$2.46)

\$2.46

Damages sustained on such purchases (73X\$3.04)

\$221.92

169

170

171

57

EXHIBIT A (P. 40)

SIZE: 7.00 BY 16 (PASSENGER, 6 PLY)

[illegible]

EXHIBIT A (P. 41)

SIZE: 7.00 BY 17 (PASSENGER, 6 PLY) (W.V.)

59

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/17/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	....	....	....	....	\$11.43	\$10.31	\$8.56	\$1.69	\$2.38	\$1.57
The Cooper Corp	....	....	....	....	....	9.73 (Zone 3)	9.86	....	....	....
Dayton Rubber Mfg	\$11.55	....	\$12.97	\$12.97	....	12.39	9.86	....	....	....
Dunlop Tire	11.55	....	....	....	....	....	(All others)	....	....	....
Falls Rubber Corp	....	....	12.97	12.97	....	8.56	....	....	....	....
Firestone Tire	11.55	\$12.24	12.97	12.97	....	10.61	....	....	....	....
Fisk Rubber Corp	11.55	12.24	12.97	12.97	....	10.07	....	....	....	....
General Tire	11.55	12.24	12.97	12.97	....	12.01	....	....	....	....
B. F. Goodrich Co	11.55	12.24	12.97	12.97	....	11.35	....	....	....	....
Goodyear Tire	11.55	12.24	12.97	12.97	....	13.25	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	11.80	....	....	....	....
Kelly-Springfield	11.55	12.24	12.97	12.97	....	11.58	....	....	....	....
Lee Tire & Rubber	11.55	12.24	12.97	12.97	....	11.29	....	....	....	....
Mohawk	....	....	12.97	12.97	....	11.97	....	....	....	....
Norwalk Tire	11.55	....	12.97	12.97	....	13.21	....	....	....	....
Pennsylvania	11.55	12.24	12.97	12.97	....	10.74	....	....	....	....
F. G. Schenuit	11.55	....	....	....	....	14.15	....	....	....	....
Seiberling Rubber	11.55	12.24	12.97	12.97	....	9.86	....	....	....	....
U. S. Rubber Prod	11.55	....	12.97	12.97	....	10.00	....	....	....	....
U. S. Tire Dealers	....	12.24	....	....	....	....	....	....	....	....

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37

4

10

10

10

10

10

Damages sustained
on such purchases
(4X\$1.69)
\$6.76

Damages sustained
on such purchases
(10X\$2.38)
\$23.80

175

176

177

EXHIBIT A (P. 42)

SIZE: 7.00 BY 18 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$12.13	\$10.87	\$9.11	\$3.61	\$2.32	\$1.89
The Cooper Corp	\$11.85	....	\$13.31	\$13.31	....	10.07 (Zone 3)	....	....	....	....
Dayton Rubber Mfg	11.85	....	13.31	13.31	....	12.70	10.07	....	....	....
Dunlop Tire	11.85	....	....	....	....	....	(Zone 5)	....	....	....
Falls Rubber Corp	11.85	....	13.31	13.31	....	9.11	10.24	....	....	....
Firestone Tire	11.85	\$12.56	13.31	13.31	....	11.22 (All others)	....	....	....	....
Fisk Rubber Corp	11.85	12.56	13.31	13.31	....	10.49	....	....	....	....
General Tire	11.85	12.56	13.31	13.31	....	12.27	....	....	....	....
B. F. Goodrich Co	11.85	12.56	13.31	13.31	....	11.99	....	....	....	....
Goodyear Tire	11.85	12.56	13.31	13.31	....	14.52	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	12.40	....	....	....	....
Kelly-Springfield	11.85	12.56	13.31	13.31	....	11.73	....	....	....	....
Lee Tire & Rubber	11.85	12.56	13.31	13.31	....	11.94	....	....	....	....
Mohawk	....	....	13.31	13.31	....	12.26	....	....	....	....
Norwalk Tire	11.85	....	13.31	13.31	....	13.54	....	....	....	....
Pennsylvania	11.85	12.56	13.31	13.31	....	11.40	....	....	....	....
F. G. Schennit	11.85	....	....	....	....	14.50	....	....	....	....
Seiberling Rubber	11.85	12.56	13.31	13.31	....	16.56	....	....	....	....
U. S. Rubber Prod	11.85	....	13.31	13.31	....	10.24	....	....	....	....
U. S. Tire Dealers	....	12.56	....	....	....	....	....	....	....	....
<div>Column 11</div> <div>Number of tires purchased during period 10/1/36 to 3/31/37</div> <div>Column 12</div> <div>Number of tires purchased during period 4/1/37 to 9/30/37</div> <div>4</div> <div>Damages sustained on such purchases</div> <div>Damages sustained on such purchases</div> <div>(4X\$2.32)</div> <div>\$9.28</div>										

SIZE: 7.00 BY 20 (PASSENGER, 6 PLY)

61

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$12.69	\$11.83	\$11.08	\$1.35	\$2.10	\$1.46
The Cooper Corp	\$12.58	....	\$14.13	\$14.13	....	11.09 (Zones 1-5)	....	....	....	....
Dayton Rubber Mfg	12.58	....	14.39	14.39	....	13.47	11.23	....	....	....
Dunlop Tire	....	....	....	....	....	....	(All others)	....	....	....
Falls Rubber Corp	12.58	....	....	....	....	....	....	....	....	....
Firestone Tire	12.58	\$13.33	14.13	14.13	....	12.06	....	....	....	....
Fisk Rubber Corp	12.58	13.33	14.13	14.13	....	11.08	....	....	....	....
General Tire	12.58	13.33	14.13	14.13	....	13.09	....	....	....	....
B. F. Goodrich Co	12.58	13.33	14.13	14.13	....	13.54	....	17	....	37
Goodyear Tire	12.58	13.33	14.13	14.13	....	15.49	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	13.52	....	....	....	....
Kelly-Springfield	12.58	13.33	14.13	14.13	....	12.34	....	....	....	....
Lee Tire & Rubber	12.58	13.33	14.13	14.13	....	12.95	....	....	....	....
Mohawk	....	....	14.13	14.13	....	13.07	....	....	....	....
Norwalk Tire	12.58	....	14.13	14.13	....	14.43	....	....	....	....
Pennsylvania	12.58	13.33	14.13	14.13	....	11.93	....	....	....	....
F. G. Schenuit	12.58	....	....	....	....	15.46	....	....	....	....
Seiberling Rubber	12.58	13.33	14.13	14.13	....	11.23	....	....	....	....
U. S. Rubber Prod	12.58	....	14.13	14.13	....	12.30	....	....	....	....
U. S. Tire Dealers	....	13.33	....	....	....	....	....	....	....	....

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

Column 13

Damages sustained on such purchases

(37X\$2.10)

\$77.70

181

182

183

EXHIBIT A (P. 44)

SIZE: 7.50 BY 15 (PASSENGER, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 19/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$10.55	\$10.32	\$9.20	\$1.39	\$2.08	\$0.49
The Cooper Corp	\$11.45	....	....	....	....	9.20 (Zone 5)	10.06			
Dayton Rubber Mfg	....	....	....	....	....	....	10.06			
Dunlop Tire	11.45	....	....	....	....	....	(all others)			
Falls Rubber Corp	11.45	....	\$12.87	\$12.87	....	....		Column 11	Column 12	
Firestone Tire	11.45	\$12.14	12.87	12.87	....	10.06		Number of tires pur- chased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	
Fisk Rubber Corp	11.45	....	....	....	....	....
General Tire	....	....	....	....	....	....
B. F. Goodrich Co	11.45	12.14	12.87	12.87	....	11.39	27		22	
Goodyear Tire	11.45	12.14	12.87	12.87	....	13.80				
Hicks Rubber Co	....	....	....	....	....	....		Damages sustained	Damages sustained	
Kelly-Springfield	11.45	12.14	12.87	12.87	....	....		on such purchases	on such purchases	
Lee Tire & Rubber	....	....	....	....	....	....		(27X\$1.39)	(22X\$2.08)	
Mohawk	....	....	....	....	....	12.16		\$37.53	\$45.76	
Norwalk Tire	11.45	....	12.87	12.87	....	....		
Pennsylvania	11.45	12.14	12.87	12.87	....	9.92				
F. G. Schenuit	....	....	....	....	....	....
Seiberling Rubber	11.45	12.14	12.87	12.87	....	8.02				
U. S. Rubber Prod	11.45	....	12.87	12.87	....	....		
U. S. Tire Dealers	....	12.14	....	....	....	....

EXHIBIT A (P. 45)

SIZE: 7.50 BY 16 (PASSENGER, 4 PLY)

Company	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	Opening of 8/17/36 for period 10/1/36 to 3/31/37	Opening of 1/25/37 for period 4/1/37 to 9/30/37	Opening of 7/21/37 for period 10/1/37 to 3/31/38	Opening of 9/20/37 for period 10/1/37 to 3/31/38	Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Opening of 2/7/38 for period 4/1/38 to 9/30/38	Award prices 4/1/38 to 9/30/38	Difference between 10/1/36 award price and 9/30/38 award price	Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$12.47	.....	.....	.....	\$12.90	\$10.63	\$9.12	\$3.13	\$3.88	\$3.56
The Cooper Corp	.....	.....	\$14.01	\$14.01	.....	8.75 (Zones 1, 2, & 4)	.....	.....	.....	.....
Dayton Rubber Mfg	.....	.....	.....	.....	.....	13.38	9.34	.....	.....	.....
Dunlop Tire	.....	.....	.....	.....	.....	.....	9.34 (Zone 3)	.....	.....	.....
Falls Rubber Corp	12.47	.....	14.01	14.01	.....	9.34	.....	.....	.....	.....
Firestone Tire	12.47	\$13.22	14.01	14.01	.....	10.49	8.75	.....	.....	.....
Fisk Rubber Corp	12.47	13.22	14.01	.....	.....	9.12 (Zone 5)	.....	.....	.....	.....
General Tire	.....	.....	.....	.....	.....	.....	9.14	.....	.....	.....
B. F. Goodrich Co	12.47	13.22	14.01	14.01	.....	12.04 (All others)	.....	.....	.....	.....
Goodyear Tire	12.47	13.22	14.01	14.01	.....	15.03	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kelly-Springfield	12.47	13.22	14.01	14.01	.....	13.84	.....	.....	.....	.....
Lee Tire & Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mohawk	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Norwalk Tire	12.47	.....	14.01	14.01	.....	12.76	.....	.....	.....	.....
Pennsylvania	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F. G. Schenuit	12.47	13.22	14.01	.....	.....	13.55	.....	.....	.....	.....
Seiberling Rubber	12.47	13.22	14.01	14.01	.....	9.14	.....	.....	.....	.....
U. S. Rubber Prod	12.47	.....	14.01	14.01	.....	10.66	.....	.....	.....	.....
U. S. Tire Dealers	.....	13.22	.....	.....	.....	.....	.....	.....	.....	.....

Column 12

Column 11

Number of tires purchased during period 4/1/37 to 9/30/37

2

Damages sustained on such purchases

(2X\$3.13)

\$6.26

187

188

189

EXHIBIT A (P. 46)

SIZE: 7.50 BY 16 (PASSENGER, 6 PLY)

[illegible]

EXHIBIT A (P. 47)

SIZE: 7.50 BY 17 (PASSENGER, 6 PLY)

65

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 award price and 9/30/38 award price	Column 9 Difference between 4/1/37 award price and 9/30/38 award price	Column 10 Difference between 10/1/37 award price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$14.75	\$13.02	\$11.64	\$4.53	\$5.59	\$1.67
The Cooper Corp	....	....	....	....	....	9.73 (Zones 1-4)	....	....	....	....
Dayton Rubber Mfg	\$17.61	....	\$19.79	\$19.79	....	19.06	9.73 (Zone 5)	....	....	....
Dunlop Tire	17.61	....	....	....	....	....	13.08 (Zone 9)	....	....	....
Falls Rubber Corp	....	....	....	....	....	....	12.89	....	....	....
Firestone Tire	17.61	\$18.67	19.79	19.79	....	11.64	12.89	....	....	....
Fisk Rubber Corp	17.61	18.67	19.79	19.79	....	18.12	(All others)	....	....	....
General Tire	17.61	18.67	19.79	19.79	....	16.43	....	....	....	....
B. F. Goodrich Co	17.61	18.67	19.79	19.79	....	21.16	....	....	....	....
Goodyear Tire	17.61	18.67	19.79	19.79	....	13.08	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	19.51	....	....	....	....
Kelly-Springfield	17.61	18.67	19.79	19.79	....	13.26	....	....	....	....
Lée Tire & Rubber	17.61	18.67	19.79	19.79	....	17.93	....	....	....	....
Mohawk	....	....	19.79	19.79	....	19.91	....	....	....	....
Norwalk Tire	17.61	....	19.79	19.79	....	13.87	....	....	....	....
Pennsylvania	17.61	18.67	19.79	19.79	....	....	....	....	....	....
F. G. Schenuit	....	....	....	....	....	....	....	....	....	....
Seiberling Rubber	....	....	....	....	....	....	....	....	....	....
U. S. Rubber Prod	17.61	....	19.79	19.79	....	16.87	....	....	....	....
U. S. Tire Dealers	....	18.67	....	....	....	....	....	....	....	....

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

Damages sustained on such purchases

(6X\$4.53)

\$27.18

Damages sustained on such purchases

(6X\$5.59)

\$33.54

193

194

195

196

197

198

EXHIBIT A (P. 48)

SIZE: 7.50 BY 18 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 to 10/2/36 to 5/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$16.34	\$13.14	\$11.96	\$4.79	\$5.87	\$3.20
The Cooper Corp	....	....	....	....	....	10.07 (Zones 1-4)	....	....	....	....
Dayton Rubber Mfg	....	....	....	....	....	....	10.07	....	....	....
Dunlop Tire	....	....	....	....	....	....	(Zone 5)	....	....	....
Falls Rubber Corp	....	....	....	....	....	....	....	....	....	....
Firestone Tire	\$17.93	\$19.01	\$20.15	\$20.15	....	12.87	13.14	....	....	....
Fisk Rubber Co p	17.93	19.01	20.15	20.15	....	13.23 (All others)	....	....	....	....
General Tire	17.93	19.01	20.15	20.15	....	11.96	....	....	....	....
B. F. Goodrich Co	17.93	19.01	20.15	20.15	....	18.30	....	....	....	....
Goodyear Tire	17.93	19.01	20.15	20.15	....	....	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	21.57	....	....	....	....
Kelly-Springfield	17.93	19.01	20.15	20.15	....	....	....	....	....	....
Lee Tire & Rubber	17.93	19.01	20.15	20.15	....	14.03	....	....	....	....
Mohawk	....	....	....	....	....	18.10	....	....	....	....
Norwalk Tire	17.93	19.01	20.15	20.15	....	20.10	....	....	....	....
Pennsylvania	....	....	....	....	....	....	....	....	....	....
F. G. Schenuit	....	....	....	....	....	....	....	....	....	....
Seiberling Rubber	....	....	....	....	....	....	....	....	....	....
U. S. Rubber Prod	17.93	....	20.15	20.15	....	17.02	....	....	....	....
U. S. Tire Dealers	....	19.01	....	....	....	....	....	....	....	....

66

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

10

Damages sustained on such purchases (10X\$5.87) \$58.70

EXHIBIT A (P. 49)

SIZE: 7.50 BY 19 (PASSENGER, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$16.96	\$13.63	\$13.40	\$4.95	\$6.06	\$3.33
The Cooper Corp	.....	.....	.....	.....	.....	10.67	(Zone 3)	.....	.....	.....
Dayton Rubber Mfg	.....	.....	.....	.....	.....	.....	10.67	.....	.....	.....
Dunlop Tire	.....	.....	.....	.....	.....	.....	(Zone 5)	.....	.....	.....
Falls Rubber Corp	.....	.....	.....	.....	.....	13.40	13.63	.....	.....	.....
Firestone Tire	\$18.58	\$19.69	\$20.87	\$20.87	.....	14.45	(All others)	.....	.....	.....
Fisk Rubber Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
General Tire	18.58	.....	.....	.....	.....	.....	.....	.....	.....	.....
B. F. Goodrich Co	18.58	19.69	20.87	20.87	.....	.....	.....	.....	.....	.....
Goodyear Tire	18.58	19.69	20.87	20.87	.....	22.34	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kelly-Springfield	18.58	19.69	20.87	20.87	.....	.....	.....	.....	.....	.....
Lee Tire & Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mohawk	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Norwalk Tire	18.58	.....	20.87	20.87	.....	20.82	.....	.....	.....	.....
Pennsylvania	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F. G. Schenuit	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seiberling Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
U. S. Rubber Prod	18.58	.....	20.87	20.87	.....	17.60	.....	.....	.....	.....
U. S. Tire Dealers	.....	19.69	.....	.....	.....	.....	.....	.....	.....	.....

Column 11
Number of tires purchased during period 10/1/36 to 3/31/37

Column 12
Number of tires purchased during period 4/1/37 to 9/30/37

Damages sustained on such purchases

(8.34.95)
\$39.60

199

200

201

EXHIBIT A (P. 50)

SIZE: 30" BY 5" (TRUCK, 8 PLY)

[illegible]

SIZE: 32 BY 6, 5-INCH RIM (TRUCK, 8 PLY)

205

206

207

[illegible]

208

209

210

EXHIBIT A (P. 52)

SIZE: 32 BY 6, 6-INCH RIM (TRUCK, 10 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
The Cooper Corp	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Dayton Rubber Mfg	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Dunlop Tire	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Falls Rubber Corp	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Firestone Tire	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Fisk Rubber Corp	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
General Tire	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
B. F. Goodrich Co	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Goodyear Tire	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Hicks Rubber Co	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Kelly-Springfield	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Lee Tire & Rubber	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Mohawk	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Norwalk Tire	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Pennsylvania	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
F. G. Schenuit	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
Seiberling Rubber	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
U. S. Rubber Prod	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48
U. S. Tire Dealers	22.42	22.42	22.42	22.42	22.98	20.20	19.50	22.92	24.27	23.48

70

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37

2,302 1,833

Damages sustained on such purchases (1,833X\$4.27)
\$6,721.84 \$7,826.91

EXHIBIT A (P. 53)

SIZE: 36 BY 6 (TRUCK, 10 PLY)

71

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/28/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$26.52	\$25.08	\$21.60	\$3.82	\$5.35	\$4.92
The Cooper Corp	\$25.42	....	\$28.57	\$28.57	....	25.65	Column 11	Column 12		
Dayton Rubber Mfg	25.72	....	28.57	28.57	....	27.41	Number of tires pur- chased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37		
Dunlop Tire	25.42	....	....	....	....	....
Falls Rubber Corp	25.42	....	28.57	28.57	....	24.15				28
Firestone Tire	25.42	....	28.57	28.57	....	23.15				
Fisk Rubber Corp	25.42	\$26.95	28.57	28.57	....	21.66				
General Tire	25.42	26.95	28.57	28.57	....	26.10	Damages sustained on such purchases	Damages sustained on such purchases		
B. F. Goodrich Co	25.42	26.95	28.57	28.57	....	26.93			(28X\$5.35)	
Goodyear Tire	25.42	26.95	28.57	28.57	....	28.52			\$149.80	
Hicks Rubber Co	....	....	....	....	....	....
Kelly-Springfield	25.42	26.95	28.57	28.57	....	28.28				
Lee Tire & Rubber	25.42	26.95	28.57	28.57	....	25.19				
Mohawk	....	....	28.57	28.57	....	25.95				
Norwalk Tire	25.42	....	28.57	28.57	....	28.78				
Pennsylvania	25.42	26.95	28.57	28.57	....	24.93				
F. G. Schenutt	25.42	26.95	....	28.57	....	28.66				
Seiberling Rubber	25.42	26.95	28.57	28.57	....	21.60				
U. S. Rubber Prod	25.42	....	28.57	28.57	....	25.75				
U. S. Tire Dealers	....	26.95	....	....	....	....

211

212

213

EXHIBIT A (P. 55)

SIZE: 34 BY 7 (TRUCK, 10 PLY)

73

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$31.75	\$29.00	\$24.82	\$5.31	\$7.12	\$6.93
The Cooper Corp	\$30.13	....	\$33.86	\$33.86	....	28.64	....	....	....	....
Dayton Rubber Mfg	30.13	....	33.86	33.86	....	32.63	....	....	....	....
Dunlop Tire	30.13 ²	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	30.13	....	33.86	33.86	....	27.56	....	....	....	....
Firestone Tire	30.13	\$31.94	33.86	33.86	....	26.60	....	....	....	....
Fisk Rubber Corp	30.13	31.94	33.86	33.86	....	27.68	....	....	....	....
General Tire	30.13	31.94	33.86	33.86	....	31.14	....	....	....	....
B. F. Goordich Co	30.13	31.94	33.86	33.86	....	29.54	....	....	....	....
Goodyear Tire	30.13	31.94	33.86	33.86	....	29.31	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	33.95	....	....	....	....
Kelly-Springfield	30.13	31.94	33.86	33.86	....	33.85	....	....	....	....
Lee Tire & Rubber	30.13	31.94	33.86	33.86	....	27.41	....	....	....	....
Mohawk	....	....	33.86	33.86	....	30.98	....	....	....	....
Norwalk Tire	30.13	....	33.86	33.86	....	34.36	....	....	....	....
Pennsylvania	30.13	31.94	33.86	33.86	....	29.85	....	....	....	....
F. G. Schenuit	30.13	31.94	33.86	33.19	....	33.40	....	....	....	....
Seiberling Rubber	30.13	31.94	33.86	33.86	....	24.82	....	....	....	....
U. S. Rubber Prod	30.13	....	33.86	33.86	....	29.20	....	....	....	....
U. S. Tire Dealers	....	31.94	....	....	....	....	....	....	....	....

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37
625

Column 12

Number of tires purchased
during period 4/1/37 to
9/30/37
452

Damages sustained
on such purchases
(625X\$5.31)
\$3,318.75

Damages sustained
on such purchases
(452X\$7.12)
\$3,218.24

217

218

219

220

221

222

EXHIBIT A (P. 56)

SIZE: 38 BY 7 (TRUCK, 10 PLY)

Company	Column 1 Opening of 3/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$36.85	\$34.65	\$27.67	\$6.61	\$8.67	\$9.18
The Cooper Corp	\$34.28	....	\$38.52	\$38.52	....	31.42	Column 11 Number of tires pur- chased during period 10/1/36 to 3/31/37	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37		
Dayton Rubber Mfg	34.59	....	38.52	38.52	....	37.05	2			
Dunlop Tire	34.28	....	....	....	....	....
Falls Rubber Corp	34.28	....	38.52	38.52	....	30.56				2
Firestone Tire	34.28	36.34	38.52	38.52	....	29.80				
Fisk Rubber Corp	34.28	36.34	38.52	38.52	....	30.46				
General Tire	34.28	36.34	38.52	38.52	....	33.33	Damages sustained	Damages sustained		
B. F. Goodrich Co	34.28	36.34	38.52	38.52	....	34.50	on such purchases	on such purchases		
Goodyear Tire	34.28	36.34	38.52	38.52	....	39.65	(2X\$6.51)	(2X\$8.67)		
Hicks Rubber Co	....	....	....	....	....	35.44	\$13.22	\$17.34		
Kelly-Springfield	34.28	36.34	38.52	38.52	....	36.17				
Lee Tire & Rubber	34.28	36.34	38.52	38.52	....	31.38				
Mohawk	....	....	35.52	38.52	....	33.23				
Norwalk Tire	34.28	....	38.52	38.52	....	36.79				
Pennsylvania	34.28	36.34	38.52	38.52	....	34.64				
F. G. Schenuit	34.28	36.34	38.52	37.36	....	38.55				
Seiberling Rubber	34.28	36.34	38.52	38.52	....	27.67				
U. S. Rubber Prod	34.28	....	38.52	38.52	....	33.00				
U. S. Tire Dealers	....	36.34	....	....	....	....

EXHIBIT A (P. 57)

SIZE: 36 BY 8 (TRUCK, 12, PLY)

Company	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
	Opening of 9/17/36 for period 10/1/36 to 3/31/37	Opening of 1/25/37 for period 4/1/37 to 9/30/37	Opening of 7/21/37 for period 10/1/37 to 3/31/38	Opening of 9/20/37 for period 10/1/37 to 3/31/38	Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Opening of 2/7/38 for period 4/1/38 to 9/30/38	Award prices 4/1/38 to 9/30/38	Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$39.85	\$42.51	\$23.82	\$8.96	\$11.53	\$6.03
The Cooper Corp	\$42.78	.....	\$48.07	\$48.07	.....	38.54	.....	.....	.....	.....
Dayton Rubber Mfg	42.78	...	48.07	48.07	.....	46.32	.....	.....	.....	.....
Dunlop Tire	42.78	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	42.78	.....	48.07	48.07	.....	37.64	.....	.....	.....	.....
Firestone Tire	42.78	\$45.35	48.07	48.07	.....	36.40	.....	.....	.....	.....
Fisk Rubber Corp.	42.78	45.35	48.07	48.07	.....	39.71	.....	.....	.....	.....
General Tire	42.78	45.35	48.07	48.07	.....	43.40	.....	.....	.....	.....
B. F. Goodrich Co	42.78	45.35	48.07	48.07	.....	42.26	.....	.....	.....	.....
Goodyear Tire	42.78	45.35	48.07	48.07	.....	47.80	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	45.90	.....	.....	.....	.....
Kelly-Springfield	42.78	45.35	48.07	48.07	.....	47.01	.....	.....	.....	.....
Lee Tire & Rubber	42.78	45.35	48.07	48.07	.....	39.43	.....	.....	.....	.....
Mohawk	.....	.....	48.07	48.07	.....	43.02	.....	.....	.....	.....
Norwalk Tire	42.78	.....	40.07	40.07	.....	47.73	.....	.....	.....	.....
Pennsylvania	42.78	45.35	48.07	48.07	.....	37.46	.....	.....	.....	.....
F. G. Schenuit	42.78	45.35	48.07	45.67	.....	45.48	.....	.....	.....	.....
Seiberling Rubber	42.78	45.35	48.07	48.07	.....	33.82	.....	.....	.....	.....
U. S. Rubber Prod	42.78	.....	48.07	48.07	.....	42.69	.....	.....	.....	.....
U. S. Tire Dealers	.....	45.35	.....	.....	.....	.....	.....	.....	.....	.....

Column 11
Number of tires purchased during period 10/1/36 to 3/31/37.

13

10

Column 12
Number of tires purchased during period 4/1/37 to 9/30/37

Damages sustained on such purchases

Damages sustained on such purchases

(10X\$8.96)

(13X\$11.53)

\$89.60

\$149.89

223

224

225

EXHIBIT A (P. 58)

SIZE: 40 BY 8 (TRUCK, 12 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/27/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$50.17	\$47.15	\$35.77	\$12.51	\$15.41	\$14.40
The Cooper Corp	\$48.28	....	\$54.25	\$54.25	....	42.28	....	....	....	....
Dayton Rubber Mfg	48.28	....	54.25	54.25	....	52.17	....	....	....	....
Dunlop Tire	48.28	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	48.28	....	54.25	54.25	....	41.23	....	....	....	....
Firestone Tire	48.28	\$51.18	54.25	54.25	....	42.50	....	....	....	....
Fisk Rubber Corp	48.28	51.18	54.25	54.25	....	43.14	....	....	....	....
General Tire	48.28	51.18	54.25	54.25	....	45.69	....	....	....	....
B. F. Goodrich Co	48.28	51.18	54.25	54.25	....	47.62	....	....	....	....
Goodyear Tire	48.28	51.18	54.25	54.25	....	54.91	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	50.43	....	....	....	....
Kelly-Springfield	48.28	51.18	54.25	54.25	....	51.42	....	....	....	....
Lee Tire & Rubber	48.28	51.18	54.25	54.25	....	44.61	....	....	....	....
Mohawk	....	....	54.25	54.25	....	47.14	....	....	....	....
Norwalk Tire	48.28	....	54.25	54.25	....	52.25	....	....	....	....
Pennsylvania	48.28	51.16	54.25	54.25	....	47.16	....	....	....	....
F. G. Schenuit	48.28	51.18	54.25	51.54	....	53.47	....	....	....	....
Seiberling Rubber	48.28	51.18	54.25	54.25	....	35.77	....	....	....	....
U. S. Rubber Prod	48.28	....	54.25	54.25	....	46.76	....	....	....	....
U. S. Tire Dealers	....	51.18	....	....	....	....	....	....	....	....

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37

19

51

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37

Damages sustained on such purchases (19X\$12.51)
\$237.69

Damages sustained on such purchases (51X\$15.41)
\$785.91

EXHIBIT A (P. 59)

SIZE: 6.00 BY 20 (TRUCK, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$10.41	....	....	....	\$10.93	\$10.05	\$8.80	\$1.61	\$2.23	\$2.13
The Cooper Corp	10.41	....	\$11.69	\$11.69	....	11.25	Column 11 Number of tires purchased during period 10/1/36 to 3/31/37 1,292			
Dayton Rubber Mfg	10.41	....	11.69	11.69	....	11.10				
Dunlop Tire	10.41	....	11.69	11.69	....	....	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37 887			
Falls Rubber Corp	10.41	....	11.69	11.69	....	10.91				
Firestone Tire	10.41	\$11.03	11.69	11.69	....	8.80	Damages sustained on such purchases (1,292X\$1.61) \$2,080.12			
Fisk Rubber Corp	10.41	11.03	11.69	11.69	....	9.47				
General Tire	10.41	11.03	11.69	11.69	....	10.48	Damages sustained on such purchases (887X\$2.23) \$1,978.01			
B. F. Goodrich Co	10.41	11.03	11.69	11.69	....	9.93				
Goodyear Tire	10.41	11.03	11.69	11.69	....	9.42				
Hicks Rubber Co	....	....	....	....	....	12.44	230			
Kelly-Springfield	10.41	11.03	11.69	11.69	....	11.42				
Lee Tire & Rubber	10.41	11.03	11.69	11.69	....	10.93	231			
Mohawk	....	....	11.69	11.69	....	10.56				
Norwalk Tire	10.41	....	11.69	11.69	....	11.64	229			
Pennsylvania	10.41	11.03	11.69	11.69	....	10.27				
F. G. Schenuit	10.41	....	....	....	....	14.28	230			
Seiberling Rubber	10.41	11.03	11.69	11.69	....	9.47				
U. S. Rubber Prod	10.41	....	11.69	11.69	....	9.37	231			
U. S. Tire Dealers	....	11.03	....	....	....	....

EXHIBIT A (P. 60)

SIZE: 6.50 BY 20 (TRUCK, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$13.28	\$12.48	\$10.82	\$2.06	\$2.83	\$2.46
The Cooper Corp	\$12.88	.....	\$14.47	\$14.47	....	11.96	.....	.....	.....	.....
Dayton Rubber Mfg	12.88	.....	14.47	14.47	....	13.81	.....	.....	.....	.....
Dunlop Tire	12.88	.....	.....	.....	....	.....	.....	.....	.....	.....
Falls Rubber Corp	12.88	.....	14.47	14.47	....	12.47	.....	.....	.....	.....
Firestone Tire	12.88	\$13.65	14.47	14.47	....	11.45	.....	.....	.....	.....
Fisk Rubber Corp	12.88	13.65	14.47	14.47	....	10.90	.....	.....	.....	.....
General Tire	12.88	13.65	14.47	14.47	....	12.75	.....	.....	.....	.....
B. F. Goodrich Co	12.88	13.65	14.47	14.47	....	11.72	.....	.....	.....	.....
Goodyear Tire	12.88	13.65	14.47	14.47	....	12.03	.....	.....	.....	.....
Hicks Rubber Co	....	.....	.....	.....	....	14.04	.....	.....	.....	.....
Kelly-Springfield	12.88	13.65	14.47	14.47	....	14.84	.....	.....	.....	.....
Lee Tire & Rubber	12.88	13.65	14.47	14.47	....	12.83	.....	.....	.....	.....
Mohawk	....	.....	.....	.....	....	13.65	.....	.....	.....	.....
Norwalk Tire	12.88	.....	14.47	14.47	....	15.10	.....	.....	.....	.....
Pennsylvania	12.88	13.65	14.47	14.47	....	15.06	.....	.....	.....	.....
F. G. Schenuit	12.88	.....	.....	.....	....	16.81	.....	.....	.....	.....
Seiberling Rubber	12.88	13.65	14.47	14.47	....	10.82	.....	.....	.....	.....
U. S. Rubber Prod	12.88	.....	14.47	14.47	....	11.97	.....	.....	.....	.....
U. S. Tire Dealers	....	13.65	.....	.....	....	.....	.....	.....	.....	.....

SIZE: 7.00 BY 20 (TRUCK, 8 PLY)

79

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	.....	.....	.....	.....	\$17.90	\$17.50	\$14.47	\$3.48	\$4.56	\$3.43
The Cooper Corp	\$17.95	.....	\$20.17	\$20.17	.....	16.80	.....	.....	.....	.....
Dayton Rubber Mfg	17.95	.....	20.17	20.17	.....	19.25	.....	.....	.....	.....
Dunlop Tire	17.95	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	17.95	.....	20.17	20.17	.....	16.43	.....	.....	.....	.....
Firestone Tire	17.95	\$19.03	20.17	20.17	.....	15.62	.....	.....	.....	.....
Fisk Rubber Corp	17.95	19.03	20.17	20.17	.....	14.66	.....	.....	.....	823
General Tire	17.95	19.03	20.17	20.17	.....	18.12	.....	.....	.....	.....
B. F. Goodrich Co	17.95	19.03	20.17	20.17	.....	17.10	.....	.....	.....	.....
Goodyear Tire	17.95	19.03	20.17	20.17	.....	17.61	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	20.12	.....	.....	.....	.....
Kelly-Springfield	17.95	19.03	20.17	20.17	.....	19.58	.....	.....	.....	.....
Lee Tire & Rubber	17.95	19.03	20.17	20.17	.....	19.46	.....	.....	.....	.....
Mohawk	.....	.....	20.17	20.17	.....	18.10	.....	.....	.....	.....
Norwalk Tire	17.95	.....	20.17	20.17	.....	20.02	.....	.....	.....	.....
Pennsylvania	17.95	19.03	20.17	20.17	.....	16.83	.....	.....	.....	.....
F. G. Schennit	17.95	19.03	.....	.....	.....	21.00	.....	.....	.....	.....
Seiberling Rubber	17.95	19.03	20.17	20.17	.....	14.47	.....	.....	.....	.....
U. S. Rubber Prod	17.95	.....	20.17	20.17	.....	16.07	.....	.....	.....	.....
U. S. Tire Dealers	.....	19.03	.....	.....	.....	.....	.....	.....	.....	.....

Column 11
Number of tires pur-
chased during period
10/1/36 to 3/31/37

611

Column 12
Number of tires purchased
during period 4/1/37 to
9/30/37

Damages sustained
on such purchases
(611X\$3.48)
\$2,126.28

Damages sustained
on such purchases
(823X\$4.56)
\$3,752.88

235

236

237

238

239

240

EXHIBIT A (P. 62)

SIZE: 7.50 BY 20 (TRUCK, 8 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	\$21.44	....	....	....	\$21.82	\$20.89	\$17.60	\$3.84	\$5.13	\$4.22
The Cooper Corp	21.44	....	\$24.09	\$24.09	....	24.86	Column 11 Number of tires pur- chased during period 10/1/36 to 3/31/37 685			
Dayton Rubber Mfg	21.44	....	24.09	24.09	....	22.84	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37 1,399			
Dunlop Tire	21.44	....	....	....	....	....	Damages sustained on such purchases (685X\$3.84) \$2,630.40			
Falls Rubber Corp	21.44	....	24.09	24.09	....	23.25	Damages sustained on such purchases (1,399X\$5.13) \$7,176.87			
Firestone Tire	21.44	....	24.09	24.09	....	18.95				
Fisk Rubber Corp	21.44	\$22.73	24.09	24.09	....	19.12				
General Tire	21.44	22.73	24.09	24.09	....	21.86				
B. F. Goodrich Co	21.44	22.73	24.09	24.09	....	18.74				
Goodyear Tire	21.44	22.73	24.09	24.09	....	21.06				
Hicks Rubber Co	....	22.73	24.09	24.09	....	25.75				
Kelly-Springfield	21.44	22.73	24.09	24.09	....	23.77				
Lee Tire & Rubber	21.44	22.73	24.09	24.09	....	21.18				
Mohawk	....	....	24.09	24.09	....	21.88				
Norwalk Tire	21.44	....	24.09	24.09	....	24.19				
Pennsylvania	21.44	22.73	24.09	24.09	....	20.51				
F. G. Schenuit	21.44	....	....	....	....	26.00				
Seiberling Rubber	21.44	22.73	24.09	24.09	....	20.65				
U. S. Rubber Prod	21.44	....	24.09	24.09	....	17.60				
U. S. Tire Dealers	....	22.73	....	....	....	....

80

SIZE: 8.25 BY 18 (TRUCK, 10 PLY)

81

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	...	...	...	...	\$33.15	\$31.92	\$27.07	\$3.21	\$5.03	\$6.08
The Cooper Corp.	...	...	...	...	...	...	(Zones 10 and 11)	...	...	...
Dayton Rubber Mfg	...	...	...	...	...	...	26.60	...	...	...
Dunlop Tire	...	...	...	...	...	...	(All others)	...	...	...
Falls Rubber Corp	...	...	...	...	...	...	...	...	...	...
Firestone Tire	\$30.28	\$32.10	\$34.03	\$34.03	...	27.54	...	...	...	...
Fisk Rubber Corp	...	32.10	34.03	34.03	...	30.34	...	...	...	...
General Tire	30.28	32.10	34.03	34.03	...	31.39	...	...	...	...
B. F. Goodrich Co.	30.28	32.10	34.03	34.03	...	29.77	...	...	...	...
Goodyear Tire	30.28	32.10	34.03	34.03	...	33.61	2	...	...	...
Hicks Rubber Co	...	...	...	...	...	...	...	...	...	...
Kelly-Springfield	...	...	...	...	...	...	...	...	...	...
Lee Tire & Rubber	...	...	34.03	34.03	...	26.60	...	...	...	...
Mohawk	...	...	...	...	...	...	...	...	...	...
Norwalk Tire	...	...	...	...	...	...	...	...	...	...
Pennsylvania	...	...	...	...	...	...	...	...	...	...
F. G. Schennit	...	...	...	...	...	...	...	...	...	...
Seiberling Rubber	...	32.10	34.03	34.03	...	27.07	...	...	...	...
U. S. Rubber Prod	30.28	...	34.03	34.03	...	30.97	...	...	...	...
U. S. Tire Dealers	...	32.10	...	...	...	...	...	...	...	...

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

2

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

2

Damages sustained on such purchases on such purchases (2X\$5.03)

\$10.06

(2X\$3.21)

\$6.42

241

242

243

250

251

252

EXHIBIT A (P. 66)

SIZE: 9.00 BY 20 (TRUCK, 10 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	....	....	....	....	\$38.65	\$36.81	\$32.59	\$4.00	\$6.20	\$6.06
The Cooper Corp.	\$36.59	....	\$41.12	\$41.12	....	35.65	....	....	....	....
Dayton Rubber Mfg	36.59	....	41.12	41.12	....	39.42	....	....	....	....
Dunlop Tire	36.59	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	36.59	....	41.12	41.12	....	35.27	....	....	....	....
Firestone Tire	36.59	38.79	41.12	41.12	....	32.59	....	....	....	....
Fisk Rubber Corp	36.59	38.79	41.12	41.12	....	37.43	....	....	....	....
General Tire	36.59	38.79	41.12	41.12	....	36.09	....	....	....	....
B. F. Goodrich Co	36.59	38.79	41.12	41.12	....	35.30	....	....	....	....
Goodyear Tire	36.59	38.79	41.12	41.12	....	40.53	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	42.61	....	....	....	....
Kelly-Springfield	36.59	38.79	41.12	41.12	....	42.22	....	....	....	....
Lee Tire & Rubber	36.59	38.79	41.12	41.12	....	32.37	....	....	....	....
Mohawk	....	....	41.12	41.12	....	38.69	....	....	....	....
Norwalk Tire	36.59	....	41.12	41.12	....	42.90	....	....	....	....
Pennsylvania	36.59	38.79	41.12	41.12	....	36.33	....	....	....	....
F. G. Schenuit	36.59	38.79	41.12	40.30	....	39.85	....	....	....	....
Seiberling Rubber	36.59	38.79	41.12	41.12	....	....	....	....	....	....
U. S. Rubber Prod	36.59	....	41.12	41.12	....	37.00	....	....	....	....
U. S. Tire Dealers	....	38.79	....	....	....	....	....	....	....	....
								Column 11 Number of tires pur- chased during period 10/1/36 to 3/31/37	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37	
								61	149	
								Damages sustained on such purchases (61X\$4.00) \$244.00	Damages sustained on such purchases (149X\$6.20) \$923.80	

84

SIZE: 9.00 BY 22 (TRUCK, 10 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/23/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$40.25	....	\$34.23	\$4.74	\$7.08	\$6.02
The Cooper Corp	....	....	....	....	....	....	....	....	....	....
Dayton Rubber Mfg	\$38.97	....	\$43.79	\$43.79	....	....	....	....	....	....
Dunlop Tire	....	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	....	....	....	....	....	....	....	....	....	....
Firestone Tire	38.97	\$41.31	43.79	43.79	....	\$34.23	....	....	....	....
Fisk Rubber Corp	38.97	41.31	43.79	43.79	....	39.15	....	....	....	....
General Tire	38.97	41.31	43.79	43.79	....	39.84	....	....	....	....
B. F. Goodrich Co	38.97	41.31	43.79	43.79	....	39.84	....	....	....	....
General Tire	38.97	41.31	43.79	43.79	....	40.75	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	....	....	....	....	....
Kelly-Springfield	....	....	....	....	....	44.26	....	....	....	....
Lee Tire & Rubber	38.97	41.31	43.79	43.79	....	34.26	....	....	....	....
Mohawk	....	....	....	....	....	....	....	....	....	....
Norwalk Tire	....	....	....	....	....	....	....	....	....	....
Pennsylvania	38.97	41.31	43.79	43.79	....	37.84	....	....	....	....
F. G. Schenuit	....	....	....	....	....	....	....	....	....	....
Seiberling Rubber	38.97	41.31	43.79	43.79	....	36.82	....	....	....	....
U. S. Rubber Prod	38.97	....	43.79	43.79	....	40.26	....	....	....	....
U. S. Tire Dealers	....	41.31	....	....	....	....	....	....	....	....

Column 12

Column 11

Number of tires purchased during period 4/1/37 to 9/30/37

4

12

Damages sustained on such purchases (4X\$7.08) \$28.32

(12X\$4.74) \$56.88

253

254

255

256

257

258

EXHIBIT A (P. 68)

SIZE: 9.00 BY 24 (TRUCK, 10 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/35 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	....	....	....	....	\$43.35	\$42.59	\$35.73	\$5.85	\$8.34	\$7.62
The Cooper Corp	\$41.58	....	\$46.71	\$46.71	....	37.54	....	....	....	....
Dayton Rubber Mfg	....	....	46.71	46.71	....	44.84	....	....	....	....
Dunlop Tire	....	....	....	....	....	....	....	....	....	....
Falls Rubber Corp	....	....	....	....	....	....	....	....	....	....
Firestone Tire	41.58	44.07	46.71	46.71	....	35.73	....	....	....	....
Fisk Rubber Corp	41.58	44.07	46.71	46.71	....	40.82	....	....	....	....
General Tire	41.58	44.07	46.71	46.71	....	42.14	....	....	....	....
B. F. Goodrich Co	41.58	44.07	46.71	46.71	....	41.23	....	....	....	....
Goodyear Tire	41.58	44.07	46.71	46.71	....	46.01	....	....	....	....
Hicks Rubber Co	....	....	....	....	....	....	....	....	....	....
Kelly-Springfield	41.58	44.07	46.71	46.71	....	45.79	....	....	....	....
Lee Tire & Rubber	41.58	44.07	46.71	46.71	....	36.78	....	....	....	....
Mohawk	....	....	46.71	46.71	....	42.01	....	....	....	....
Norwalk Tire	41.58	....	46.71	46.71	....	....	....	....	....	....
Pennsylvania	41.58	44.07	46.71	46.71	....	40.75	....	....	....	....
F. G. Schenuit	....	....	....	....	....	....	....	....	....	....
Seiberling Rubber	41.58	44.07	46.71	46.71	....	36.38	....	....	....	....
U. S. Rubber Prod	41.58	....	46.71	46.71	....	41.68	....	....	....	....
U. S. Tire Dealers	....	44.07	....	....	....	....	....	....	....	....

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

6

29

Damages sustained on such purchases

(6X\$5.85)

\$35.10

(29X\$8.34)

\$241.86

86

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$50.71	\$47.60	\$41.50	\$7.03	\$9.94	\$9.21
The Cooper Corp	\$48.53	.....	\$54.53	\$54.53	.....	45.15	.....	.....	.....	.....
Dayton Rubber Mfg	48.53	.....	54.53	54.53	.....	52.58	.....	.....	.....	.....
Dunlop Tire	48.53	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	48.53	.....	54.53	54.53	.....	44.17	.....	.....	.....	.....
Firestone Tire	48.53	\$51.44	54.53	54.53	.....	41.50	.....	.....	.....	.....
Risk Rubber Corp	48.53	51.44	54.53	54.53	.....	47.02	.....	.....	.....	.....
General Tire	48.53	51.44	54.53	54.53	.....	46.85	.....	.....	.....	.....
B. F. Goodrich Co	48.53	51.44	54.53	54.53	.....	46.86	.....	.....	.....	.....
Goodyear Tire	48.53	51.44	54.53	54.53	.....	53.80	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	52.47	.....	.....	.....	.....
Kelly-Springfield	48.53	51.44	54.53	54.53	.....	55.42	.....	.....	.....	.....
Lee Tire & Rubber	48.53	51.44	54.53	54.53	.....	44.16	.....	.....	.....	.....
Mohawk	.....	.....	54.53	54.53	.....	50.59	.....	.....	.....	.....
Norwalk Tire	48.53	.....	54.53	54.53	.....	56.22	.....	.....	.....	.....
Pennsylvania	48.53	51.44	54.53	54.53	.....	47.67	.....	.....	.....	.....
F. G. Schenutt	48.53	51.44	54.53	51.80	.....	51.81	.....	.....	.....	.....
Seiberling Rubber	48.53	51.44	54.53	54.53	.....	42.48	.....	.....	.....	.....
U. S. Rubber Prod	48.53	.....	54.53	54.53	.....	47.80	.....	.....	.....	.....
U. S. Tire Dealers	.....	51.44	.....	.....	.....	.....	.....	.....	.....	.....

Column 11
 Number of tires pur-
 chased during period
 10/1/36 to 3/31/37

Column 12
 Number of tires purchased
 during period 4/1/37 to
 9/30/37

219

243

Damages sustained on such purchases
 (219X\$7.03)
 \$1,539.57

Damages sustained on such purchases
 (243X\$9.94)
 \$2,415.42

259

260

261

EXHIBIT A (P. 70)

SIZE: 9.75 BY 22 (TRUCK, 12 PLY)

[illegible]

Company	Column 1 Opening of 8/1/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co.	....	....	....	....	\$56.44	\$53.13	\$45.80	\$7.55	\$10.75	\$10.64
The Cooper Corp.	\$53.35	....	\$59.94	\$59.94	....	47.23	Column 12 Number of tires purchased during period 4/1/37 to 9/30/37			
Dayton Rubber Mfg	53.59	....	60.10	60.10	....	57.95	3			
Dunlop Tire	....	....	....	....	....	....	Damages sustained on such purchases			
Falls Rubber Corp	....	....	....	....	....	....	(3X\$10.75)			
Firestone Tire	53.35	\$56.55	59.94	59.94	....	45.80	\$32.25			
Fisk Rubber Corp	53.35	56.55	59.94	59.94	....	51.11	Damages sustained on such purchases			
General Tire	53.35	56.55	59.94	59.94	....	51.40				
B. F. Goodrich Co	53.35	56.55	59.94	59.94	....	56.40				
Goodyear Tire	53.35	56.55	59.94	59.94	....	59.01				
Hicks Rubber Co	....	....	....	....	....	57.63				
Kelly-Springfield	53.35	56.55	59.94	59.94	....	55.42				
Lee Tire & Rubber	53.35	56.55	59.94	59.94	....	49.85				
Mohawk	....	....	59.94	59.94	....	54.20				
Norwalk Tire	53.35	....	59.94	59.94	....	60.16				
Pennsylvania	53.35	56.55	59.94	59.94	....	53.05				
F. G. Schenuit	....	....	....	....	....	....
Seiberling Rubber	53.35	56.55	59.94	59.94	....	53.40				
U. S. Rubber Prod	53.35	....	59.94	59.94	....	53.77				
U. S. Tire Dealers	....	56.55	....	....	....	....

265

266

267

EXHIBIT A (P. 72)

SIZE: 10.50 BY 20 (TRUCK, 12 PLY)

[illegible]

SIZE: 11.25 BY 24 (TRUCK, 14 PLY)

91

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	...	...	...	...	\$89.47	...	\$76.48	\$12.42	\$17.75	\$12.99
The Cooper Corp.	...	...	...	...	...	...	(Zones 10 & 11)	...	...	...
Dayton Rubber Mfg	...	...	...	...	...	67.62	...	...	...	...
Dunlop Tire	...	...	...	...	...	...	\$65.15	...	...	...
Falls Rubber Corp	...	...	...	...	...	...	(All others)	...	...	...
Firestone Tire	\$88.90	\$94.23	\$99.88	\$99.88	...	75.88	...	...	...	...
Fisk Rubber Corp	88.90	94.23	99.88	99.88	...	71.79	...	...	...	...
General Tire	88.90	94.23	99.88	99.88	...	84.26	...	...	...	...
B. F. Goodrich Co	88.90	94.23	99.88	99.88	...	81.18	...	...	...	...
Goodyear Tire	88.90	94.23	99.88	99.88	...	96.71	...	...	...	...
Hicks Rubber Co	...	...	...	...	...	78.39	...	...	...	...
Kelly-Springfield	88.90	94.23	99.88	99.88	...	93.65	...	...	...	...
Lee Tire & Rubber	88.90	94.23	99.88	99.88	...	65.15	...	...	...	...
Mohawk	...	...	...	...	...	...	...	...	...	...
Norwalk Tire	...	...	...	...	...	...	...	...	...	...
Pennsylvania	88.90	94.23	99.88	99.88	...	84.10	...	...	...	...
F. G. Schenuit	...	...	...	...	...	...	...	...	...	...
Seiberling Rubber	88.90	94.23	99.88	99.88	...	76.48
U. S. Rubber Prod	88.90	...	99.88	99.88	...	84.60
U. S. Tire Dealers	...	94.23

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EXHIBIT A (P. 74)

SIZE: 13.50 BY 24 (TRUCK, 16 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$143.31	\$172.36	\$104.90	\$22.65	\$30.30	\$38.41
The Cooper Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dayton Rubber Mfg	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dunlop Tire	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Firestone Tire	\$127.55	\$135.20	\$143.31	\$143.31	.....	104.90	.....	.....	.....	.....
Fisk Rubber Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
General Tire	127.55	135.20	143.31	143.31	.....	120.79	.....	.....	.....	.....
B. F. Goodrich Co	127.55	135.20	143.31	143.31	.....	131.80	.....	.....	.....	.....
Goodyear Tire	127.55	135.20	143.31	143.31	.....	138.64	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kelly-Springfield	.....	.....	143.31	143.31	.....	150.84	.....	.....	.....	.....
Lec Tire & Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mohawk	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Norwalk Tire	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pennsylvania	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F. G. Schenuit	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seiberling Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
U. S. Rubber Prod	127.55	.....	143.31	143.31	.....	135.49	.....	.....	.....	.....
U. S. Tire Dealers	.....	135.20	.....	.....	.....	.....	.....	.....	.....	.....

Column 12

Number of tires purchased during period 4/1/37 to 9/30/37

Column 11

Number of tires purchased during period 10/1/36 to 3/31/37

1

Damages sustained on such purchases on such purchases

(1X\$22.65)

\$22.65

SIZE: 5.50 BY 17 (SPECIAL MUD AND SNOW, 6 PLX)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$7.28	\$7.10	\$6.76	\$0.37	\$0.80	\$0.52
The Cooper Corp	\$7.13	.....	\$8.01	\$8.01	.....	7.30				
Dayton Rubber Mfg	7.13	.....	8.01	8.01	.....	7.60				
Dunlop Tire	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	7.13	.....	8.01	8.01	.....	.....		
Firestone Tire	7.13	.....	8.01	8.01	.....	6.80				
Fisk Rubber Corp	.....	.....	8.01	8.01	.....	6.81				
General Tire	.....	.....	.....	8.01	.....	8.38				
B. F. Goodrich Co	7.13	7.56	8.01	8.01	.....	7.27				
Goodyear Tire	7.13	7.56	8.01	8.01	.....	7.36				
Hicks Rubber Co	.....	.....	.....	.....	.....	8.22				
Kelly-Springfield	.....	7.56	8.01	8.01	.....	.....		
Lee Tire & Rubber	.....	.....	8.01	8.01	.....	8.08				
Mohawk	.....	.....	8.01	8.01	.....	8.09				
Norwalk Tire	.....	.....	.....	.....	.....	.....
Pennsylvania	.....	7.56	8.01	8.01	.....	6.46				
F. G. Schenuit	.....	.....	.....	.....	.....	.....
Seiberling Rubber	.....	7.56	8.01	8.01	.....	6.61				
U. S. Rubber Prod	7.13	.....	8.01	8.01	.....	6.76				
U. S. Tire Dealers	.....	7.56	.....	.....	.....	.....

Column 11
Number of tires purchased during period 10/1/36 to 3/31/37

18

Column 12

22

Damages sustained on such purchases (18X\$0.37) \$6.66

Damages sustained on such purchases (22X\$0.80) \$17.60

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EXHIBIT A (P. 76)

SIZE: 6.00 BY 16 (SPECIAL MUD AND SNOW, 6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	8.58	9.64	9.64	9.64	8.34	7.90	\$7.22	\$1.36	\$1.87	\$1.12
The Cooper Corp	8.58	9.64	9.64	9.64	9.20	7.80				
Dayton Rubber Mfg	8.58	9.64	9.64	9.64	9.20	7.80				
Dunlop Tire	8.58	9.64	9.64	9.64	9.20	7.80				
Falls Rubber Corp	8.58	9.64	9.64	9.64	9.20	7.80				
Firestone Tire	8.58	9.64	9.64	9.64	9.20	7.80				
Fisk Rubber Corp	8.58	9.64	9.64	9.64	9.20	7.80				
General Tire	8.58	9.64	9.64	9.64	9.20	7.80				
B. F. Goodrich Co	8.58	9.64	9.64	9.64	9.20	7.80				
Goodyear Tire	8.58	9.64	9.64	9.64	9.20	7.80				
Hicks Rubber Co	8.58	9.64	9.64	9.64	9.20	7.80				
Kelly-Springfield	8.58	9.64	9.64	9.64	9.20	7.80				
Lee Tire & Rubber	8.58	9.64	9.64	9.64	9.20	7.80				
Mohawk	8.58	9.64	9.64	9.64	9.20	7.80				
Norwalk Tire	8.58	9.64	9.64	9.64	9.20	7.80				
Pennsylvania	8.58	9.64	9.64	9.64	9.20	7.80				
F. G. Schenuit	8.58	9.64	9.64	9.64	9.20	7.80				
Seiberling Rubber	8.58	9.64	9.64	9.64	9.20	7.80				
U. S. Rubber Prod	8.58	9.64	9.64	9.64	9.20	7.80				
U. S. Tire Dealers	8.58	9.64	9.64	9.64	9.20	7.80				

EXHIBIT A (P. 77)

SIZE: 5.00 BY 15 (LOW-PRESSURE, TRACTOR, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$5.57	\$4.62	\$3.99	\$2.41	\$2.79	\$1.58
The Cooper Corp
Dayton Rubber Mfg
Dunlop Tire
Falls Rubber Corp
Firestone Tire	\$6.40	\$6.78	\$7.19	\$7.19	....	3.99	....	....	....	....
Fisk Rubber Corp
General Tire
B. F. Goodrich Co	6.40	6.78	7.19	7.19	....	6.48	....	....	....	....
Goodyear Tire	6.40	6.78	7.19	7.19	....	5.34	....	....	....	....
Hicks Rubber Co
Kelly-Springfield
Lee Tire & Rubber
Mohawk
Norwalk Tire
Pennsylvania
F. G. Schenuit
Seiberling Rubber
U. S. Rubber Prod	6.40	....	7.19	7.19	....	4.40	....	....	....	....
U. S. Tire Dealers	6.78	....	....	....	....	....	....	....	....

Column 11: Number of tires purchased during period 10/1/36 to 3/31/37
 Column 12: Number of tires purchased during period 4/1/37 to 9/30/37
 Damages sustained on such purchases (10X\$2.41) \$24.10
 Damages sustained on such purchases (4X\$2.79) \$11.16

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EXHIBIT A (P. 78)

SIZE: 6.00 BY 16 (LOW PRESSURE, TRACTOR, 4 PLY)

[illegible]

EXHIBIT A (P. 79)

SIZE: 7.50 BY 10 (LOW PRESSURE, TRACTOR, 4 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$13.32	\$12.60	\$10.00	\$3.37	\$4.17	\$3.32
The Cooper Corp
Dayton Rubber Mfg
Dunlop Tire
Falls Rubber Corp
Firestone Tire	\$13.37	\$14.17	\$15.02	\$15.02	....	11.27	....	....	....	....
Fisk Rubber Corp
General Tire
B. F. Goodrich Co	13.37	14.17	15.02	15.02	....	13.41	....	....	....	....
Goodyear Tire	13.37	14.17	15.02	15.02	....	15.12	....	....	....	....
Hicks Rubber Co
Kelly-Springfield
Lee Tire & Rubber
Mohawk
Norwalk Tire
Pennsylvania
F. G. Schenuit
Seiberling Rubber
U. S. Rubber Prod	13.37	15.02	15.02	10.00
U. S. Tire Dealers	14.17

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Column 11
Number of tires purchased during period 10/1/36 to 3/31/37

Column 12
Number of tires purchased during period 4/1/37 to 9/30/37

Damages sustained on such purchases (2X\$4.17)
\$8.34

EXHIBIT A (P. 80)

SIZE: 9.00 BY 36 (LOW PRESSURE, TRACTOR, HEAVY DUTY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. prices for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$38.78	\$36.10	\$30.02	\$8.79	\$11.12	\$8.76
The Cooper Corp
Dayton Rubber Mfg
Dunlop Tire
Falls Rubber Corp
Firestone Tire	\$38.81	\$41.14	\$43.61	\$43.61	....	30.02	2	2	2	2
Fisk Rubber Corp	43.61	43.61	....	....	....	....	....	....
General Tire
B. F. Goodrich Co	38.81	41.14	43.61	43.61	....	46.65	....	....	....	....
Goodyear Tire	38.81	41.14	43.61	43.61	....	40.18	....	....	....	....
Hicks Rubber Co
Kelly-Springfield
Lee Tire & Rubber
Mohawk
Norwalk Tire
Pennsylvania
F. G. Schenuit
Seiberling Rubber
U. S. Rubber Prod	38.81	....	43.61	43.61	....	33.06	....	....	....	....
U. S. Tire Dealers	41.14	....	....	....	....	....	....	....	....

EXHIBIT A (P. 81)

SIZE: 11.25 BY 24 (LOW PRESSURE, TRACTOR, 6 PLY)

99

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roe- buck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference be- tween 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 award price	Column 9 Difference be- tween 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 award price	Column 10 Difference be- tween 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 award price
Sears, Roebuck & Co	\$37.83	\$34.58	\$28.94	\$5.81	\$7.90	\$8.89
The Cooper Corp
Dayton Rubber Mfg
Dunlop Tire
Falls Rubber Corp
Firestone Tire	\$34.75	\$36.84	\$39.05	\$39.05	....	28.94	4	....	....	7
Fisk Rubber Corp	39.05	39.05	....	....	....	....	....	....
General Tire
B. F. Goodrich Co	34.75	36.84	39.05	39.05	....	44.20	....	....	....	....
Goodyear Tire	34.75	36.84	39.05	39.05	....	38.64	....	....	....	....
Hicks Rubber Co
Kelly-Springfield
Lee Tire & Rubber
Mohawk
Norwalk Tire
Pennsylvania
F. G. Schenuit
Seiberling Rubber
U. S. Rubber Prod	34.75	39.05	39.05	32.26
U. S. Tire Dealers	36.84

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EXHIBIT A (P. 82)

SIZE: 12.75 BY 28 (LOW PRESSURE, TRACTOR-6 PLY)

Company	Column 1 Opening of 8/17/36 for period 10/1/36 to 3/31/37	Column 2 Opening of 1/25/37 for period 4/1/37 to 9/30/37	Column 3 Opening of 7/21/37 for period 10/1/37 to 3/31/38	Column 4 Opening of 9/20/37 for period 10/1/37 to 3/31/38	Column 5 Sears, Roebuck & Co. price for period 10/1/37 to 3/31/38	Column 6 Opening of 2/7/38 for period 4/1/38 to 9/30/38	Column 7 Award prices 4/1/38 to 9/30/38	Column 8 Difference between 10/1/36 to 3/31/37 award price and 4/1/38 to 9/30/38 highest award price	Column 9 Difference between 4/1/37 to 9/30/37 award price and 4/1/38 to 9/30/38 highest award price	Column 10 Difference between 10/1/37 to 3/31/38 price and 4/1/38 to 9/30/38 highest award price
Sears, Roebuck & Co	.....	.....	.....	.....	\$50.46	\$45.40	\$41.19	\$9.32	\$12.35	\$9.27
The Cooper Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dayton Rubber Mfg	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dunlop Tire	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Falls Rubber Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Firestone Tire	\$50.51	\$53.54	\$56.75	\$56.75	.....	41.19	.....	.....	.....	.....
Fisk Rubber Corp	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
General Tire	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
B. F. Goodrich Co	50.51	53.54	56.75	56.75	.....	59.23	.....	.....	.....	.....
Goodyear Tire	50.51	53.54	56.75	56.75	.....	54.83	.....	.....	.....	.....
Hicks Rubber Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kelly-Springfield	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lee Tire & Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mohawk	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Norwalk Tire	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pennsylvania	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
F. G. Schenuit	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seiberling Rubber	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
U. S. Rubber Prod	50.51	.....	56.75	56.75	.....	44.60	.....	.....	.....	.....
U. S. Tire Dealers	.....	53.54	.....	.....	.....	.....	.....	.....	.....	.....
								Number of tires purchased during period 10/1/36 to 3/31/37	Number of tires purchased during period 4/1/37 to 9/30/37	Number of tires purchased during period 4/1/37 to 9/30/37
								2	1	1
								Damages sustained on such purchases	Damages sustained on such purchases	Damages sustained on such purchases
								(2X\$9.32)	(1X\$12.35)	(1X\$12.35)
								\$18.64	\$12.35	\$12.35

**Motion to Dismiss Complaint. (Similar motions
made in behalf of all other defendants except
F. G. Schenuit Rubber Company.)**

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

301

[SAME TITLE]

SIES:

PLEASE TAKE NOTICE that upon the complaint herein, the undersigned will move this Court at Room 506, United States Courts and Post Office Building, Borough of Manhattan, City of New York, on the 28th day of April, 1939, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order dismissing this action because the complaint fails to state a claim against defendants upon which relief can be granted, and for such other and further relief as the Court may deem just, including permission, if this motion be denied, to answer or move for a Bill of Particulars within such time as may be fixed by order of this Court.

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Dated: New York, N. Y., April 14, 1939.

303

OSBORNE MITCHELL,
HENRY GOLDSTEIN,
Attorneys for Defendants, The Cooper
Corporation and The Falls Rubber
Company.

Opinion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

304

[SAME TITLE]

CONGER, *D.J.*:

This is a motion by the defendants to dismiss the complaint because it fails to state a claim upon which relief can be granted.

305

The complaint sets forth an alleged claim under Section 7 of the Sherman Act (26 Stat. 210) asking for treble damages allegedly suffered by the United States in purchasing tires from the defendants at uniform prices.

Section 7 of the Sherman Act reads as follows:

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"Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any district court of the United States in the district in which the defendant resides, or is found, without respect to the amount in controversy, and shall recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The question involved is whether or not the United States can be considered a "person" with the right to sue under the above-quoted section.

Section 8 of the Sherman Act, which defines a "person", reads as follows:

Opinion.

"The word 'person', or 'persons', wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country."

307

It might be noted at this time, that this is the first suit brought by the United States under this section since the Act was passed on July 2, 1890. The United States has limited itself, in the past, to the criminal and equitable injunction sections of the anti-trust laws.

Section 3 (*supra*) which defines a "person" includes corporations and associations existing under the laws of the United States, but fails to specifically include the government of the United States, and therefore, it rests upon the court to interpret this statute, and to determine whether or not the United States can be considered such a "person", entitled to sue.

308

There is very little precedent in the reported cases to aid in deciding this question, but from the cases that are reported, it is apparent that the courts, in the past, have been careful in distinguishing, not only between the criminal and civil sections of this Act, but also in distinguishing between what the United States can and cannot do under the Act. Nowhere is the United States expressly given the right to bring a civil action under Section 7; but nowhere is the United States specifically denied this right, either.

309

There are a number of cases wherein Section 7 and 8 of the Act have been construed, although not exactly on the precise point. Nevertheless there is very significant language in several of these cases, indicating that the courts have been careful to point out that Section 7 is restricted to private

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persons and that the remedy of the government is given in the criminal and equitable injunction sections of the Act.

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For instance, in the case of *Pidcock v. Harrington* (64 F. 821, 822) we find this language:

311

" * * * a private person is given (section 7) the right to maintain an action at law; * * *. The first three sections are penal statutes. They give no civil remedy. Section 4 vests the right to institute proceedings in equity in the district attorneys of the United States, and, together with Section 5, prescribes the procedure in such suits. Section 6 provides for the seizure and forfeiture to the United States of property illegally owned under the provisions of the Act. So far, then, the act is a public act providing no private remedy. * * * The only section which gives a private remedy is the seventh * * *."

In *Greer, Mills & Co. v. Stoller* (77 F. 1, 3) we find this language:

312

"Section 7 gives to the private person 'injured in his business or property by any other person or corporation by reason of anything forbidden, or declared to be unlawful by this act', a right to sue in a circuit court of the United States in the district in which the defendant resides or is found for threefold damages by him sustained. The statute being highly penal in its character, must be strictly construed and having created a new offense, and imposed new liabilities, and having provided the modes of redress to the public and private citizen, by established rules of construction, these remedies are exclusive of all others * * *."

Opinion.

In *United States v. Patterson* (201 F. 697, 714, rev'd on other grounds, 222 F. 599, cert. den. 238 U. S. 635) we find the following:

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"Hence the right given by section 7 to an individual to recover for injury to his business or property with threefold damages and the right given by section 4 to the government to prevent by injunction a continuance of the acts complained of, are rights growing out of the commission of a crime, by whomsoever it may be, whose acts also subject him to the criminal penalties of the statute. If he has been guilty of a crime described in section 1 or 2, then he may be restrained by the government in a civil action, or be compelled by an individual who has been injured in his business or property to respond in threefold damages."

314

The language in the above cases would seem to indicate a denial of the civil rights under Section 7 being given to the federal government although this is not specifically stated. The courts have pointed out that violation of the Act was a statutory offense, of a penal nature, in which the right is given to an individual to recover for injury to his business or property with threefold damage; to the government to prevent by injunction a continuance of the acts, or to subject the offender to the criminal penalties of the statute. In accord that these remedies are exclusive and that this statute must be strictly construed: *D. R. Wilder Mfg. Co. v. Corn Products Refining Co.* (236 U. S. 165); *Fleitmann v. Welsbach Street Lighting Co.* (240 U. S. 27).

315

See also *General Inv. Co. v. Lake Shore Ry.* (260 U. S. 261, 286) wherein the court used this very pertinent language:

Opinion.

316

"As respects the Sherman Anti-Trust Act as it stood before it was supplemented by the Clayton Act, this Court has heretofore determined that the civil remedies specially provided in the act for actual and threatened violations of its provisions were intended to be exclusive and that those remedies consisted only of (a) suits for injunctions brought by the United States in the public interest under §4 and (b) private actions to recover damages brought under §7."

317

An analogous situation is found in the case of *Davis v. Pringle* (1 F. (2d) 860, 863, aff'd 268 U. S. 315) wherein the court held that the United States could not be classed as a person in order to claim priority under the Bankruptcy Act. There the court said:

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"The failure to include the United States and the states in the definition could not have been inadvertent. The United States and the several states of the Union are not persons, and are not commonly thought of as persons, and if it had been intended that 'persons' should have such a comprehensive and unusual meaning as to include them, the framers of the definition would have said so.

Again, when the Congress had already dealt with claims of the United States under the name of the United States, and had deliberately limited its priority to taxes, it is hardly reasonable to attribute to the Congress an intention to deal again with the claims of the United States and include them in a provision relating to debts of 'any person'."

The United States Supreme Court stated in affirming the above-quoted case:

Opinion.

"The ordinary dignities of speech would have led to the mention of the United States at the beginning of the clause, if within its purview. Elsewhere in cases of possible doubt when the Act means the United States, it says the United States." (268 U. S. 315, 317, 318).

319

See also *United States v. Securities Corporation General, et al.* (4 F. (2d) 620, 622, aff'd 269 U. S. 283).

Thus it may be said that the courts are reluctant to include the United States in the definition of "any person", when used in a statute, unless Congress specifically includes the United States under that definition. This is even more obvious when the United States is given its remedies in other sections of the same statute.

The context of the Act is most significant. Sections 1, 2, 3, 4, and 6 explicitly gives a remedy to the United States. In Section 7 the word United States is not mentioned. This seems to be most significant, for had Congress intended to give the United States the remedy contemplated under Section 7, it would have so stated.

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The plaintiff contends further that they should not be denied the right to sue under Section 7, because the United States is a corporation, existing under the laws of the United States, namely the Constitution, and hence is entitled to sue as a "person" under the definition in Section 8 of the Act. It is fundamental that the United States exists as a sovereign of delegated powers; delegated to it by the sovereigns making up the United States, the individual states. While there may be isolated cases which hold that the different states, and even the United States, are "bodies politic and corporate", they do not hold that the United States is a corporation existing by the laws of the United States. The courts have carefully distinguished between the body of delegated powers, the Constitution, which is the "supreme

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Opinion.

322

law of the land", and the laws of the United States which are the Acts of Congress. (*Railroad Co. v. Mississippi*, 102 U. S. 135; *Beck v. Johnson*, 169 F. 154). Even in the Constitution itself, (Article III) this distinction is made:

"Section 2. The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their Authority * * *".

And again in Article VI of the Constitution:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof * * *".

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The United States cannot, therefore, be classified as a corporation existing under the laws of the United States as stated in Section 8 of the Sherman Act.

From the discussion of the framers of this Act, when it was introduced as a bill in the United States Senate, and prior to its enactment, (Congressional Record #21, pg. 2563-4, 2567, 2641), it seems quite clear that the United States itself was never intended as a party with the right to sue for treble damages under Section 7.

The motion of the defendants should be granted, and the complaint dismissed. Settle order on notice.

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Dated: February 16, 1940.

EDWARD A. CONGER,
U. S. D. J.

Order and Judgment Dismissing Complaint.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CIV 2-396

325

[SAME TITLE]

A motion having been made by the defendants herein for an order dismissing this action because the complaint fails to state a claim against defendants upon which relief can be granted, and

Said motion having duly come on to be heard on the 28th day of April, 1939, and after hearing argument of counsel for plaintiff and defendants, and due deliberation having been had thereon and upon filing the opinion of this Court dated February 16, 1940, it is, on motion of the defendants herein,

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ORDERED that the said motion be and the same is hereby granted and that this action and the complaint herein be and the same are hereby dismissed without costs.

APPROVED March 14th, 1940.

EDWARD A. CONGER,
U. S. D. J.

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March 15th, 1940

JUDGMENT RENDERED

GEORGE J. H. FOLLMER

George J. H. Follmer, Clerk

Notice of Appeal.**UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK**

328

CIV 2-396

[SAME TITLE]

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Second Circuit from the order and judgment dismissing the complaint entered in this action on March 15, 1940.

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Dated: New York, N. Y., March 21, 1940.

MYLES J. LANE,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

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Stipulation as to Record.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

331

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed to by the parties.

Dated: New York, N. Y., April , 1940.

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Stipulation as to Record.

334

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Stipulation as to Record.

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Clerk's Certificate.**UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK**

340

[SAME TITLE]

**UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, ss.:**

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I, **GEORGE J. H. FOLLMER**, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the following is a correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed at the City of New York in the Southern District of New York, this day of April, in the year of our Lord one thousand nine hundred and forty and in the Independence of the United States of America the one hundred and sixty-fourth.

GEORGE J. H. FOLLMER,
Clerk.

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

No. 363—October Term, 1939

UNITED STATES OF AMERICA, APPELLANT

against

THE COOPER CORPORATION, ET AL., APPELLEES

Argued May 21, 1940—Decided August 8, 1940

Appeal from an order of the District Court for the Southern District of New York dismissing the complaint in a suit for treble damages brought by the United States under Sec. 7 of the Sherman Act. Affirmed.

Before SWAN, CHASE, and CLARK, Circuit Judges.

CHASE, Circuit Judge: The United States brought this civil action under Sec. 7 of the Sherman Act (15 U. S. C. A. Sec. 15) against eighteen defendants to recover treble damages because of injuries resulting from an alleged unlawful agreement as to uniform prices charged the government for automobile tires it purchased. The defendants moved to dismiss on the ground that the government is not a person within the meaning of the word in Sec. 7 as defined in Sec. 8 of the Sherman Act. The motion was granted and this appeal was taken from the order dismissing the complaint.

Sec. 7 is as follows:

"Sec. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any district court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

Such a civil action as this was not formerly attempted by the government which was content to confine its activities to the other aspects of the statute. Yet there is no express provision denying it the right to sue for civil injuries it has sustained because of violations of the statute and the order below must be held right or wrong in accordance with a correct determination of whether or not the word "person" in Sec. 7 embraces the government.

Considerable light is thrown on that subject by the definition of "person" found in Sec. 8 (15 U. S. C. A. Sec. 7). It provides that: "The word 'person' or 'persons,' wherever used in section 1, 2, 3, or 15 of this chapter, shall be deemed to include corporations and

associations existing under or authorized by the laws of either the United States, the laws of any Territory, the laws of any State, or the laws of any foreign country."

Ordinarily the word person in a statute does not include the government. *United States v. Fox*, 94 U. S. 315. Nor does Sec. 8 bring the government within the statutory meaning of the word unless the United States is a corporation existing under the laws therein mentioned. Obviously, the only such laws under which it could possibly so exist are the laws of the United States. None of what are commonly known as laws of the United States, however, brought the government into being or authorized its existence. On the contrary, they exist because of it.

It exists as a government of delegated powers by virtue of the constitution and while that is sometimes classed as among the laws of the United States in that it may be said to be the supreme law of the land it is not of a kind with specific laws passed in accordance with its provisions which relate to the creation, existence, and control of corporate bodies. In the constitution itself a distinction is made between the judicial power arising under it and under the laws of the United States. Art. III; Sec. 2. See also Art. VI. The distinction has had judicial recognition. *Railroad Co. v. Mississippi*, 102 U. S. 135. The corporations and associations which are included in the word "person" by Sec. 8 of the Sherman Act as existing under or authorized by the laws of the United States must be those which could not exist except by virtue of laws other than the constitution. The federal government cannot be among those for there were no such laws until after the United States was in existence.

Nor is there any reason appearing from the language of the Sherman Act to give support to the thought that Congress intended to give the government the right to sue under Sec. 7. There is ample reason here, as there was in *Davis v. Pringle*, 268 U. S. 316, where the meaning of the word "person" as used in Sec. 64 (a) (5) of the Bankruptcy Act was under consideration, for saying that if Congress had intended to include the government in Sec. 7 the "ordinary dignities of speech would have led to the mention of the United States." Moreover, the Act has heretofore been construed uniformly to give the government power to prosecute criminally and to secure injunctions and to give private parties by Sec. 7 the right to recover civil damages for injuries. *Piddock v. Harrington*, 64 Fed. 821; *Greer Mills & Co., v. Stoller*, 77 Fed. 1; *United States v. Patterson*, 201 Fed. 697; *General Investment Co. v. Lake Shore & Michigan So. Ry. Co.*, 260 U. S. 261. Furthermore, if the federal government is included in the word "person" as one who may sue civilly for damages it must be included in the phrase "any other person or corporation" in the same section as one who may be sued; for there is absolutely nothing to indicate that Congress intended to use the same word twice in the same section without having its meaning the

same in each instance. The argument in support of the government's position is not only novel but proves too much when it leads to the imposition of such a liability by indirection.

Affirmed.

CLARK, Circuit Judge (dissenting): The occasional decisions in which the word "person" has been said to exclude the sovereign have never attained the dignity of a firm rule of law. In many cases the State or United States has been held included within legislative contemplation when "person" appeared in a statute, often under circumstances harmful, rather than helpful, to the sovereign. See *Stanley v. Schwalby*, 147 U. S. 508, 517, 13 S. Ct. 418, 37 L. Ed. 259; *Ohio v. Helvering*, 292 U. S. 360, 54 S. Ct. 725, 78 L. Ed. 1307 [cf. *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 86, 55 S. Ct. 50, 79 L. Ed. 211]; *Nardone v. United States*, 302 U. S. 379, 383, 58 S. Ct. 275, 82 L. Ed. 314; *Republic of Honduras v. Soto*, 112 N. Y. 310, 2 L. R. A. 642, 8 Am. St. Rep. 744; *State of Ohio ex re. Fulton v. Saal*, 239 App. Div. 420, 267 N. Y. S. 558, 240 App. Div. 902, 267 N. Y. S. 560, 561, appeal dismissed on other grounds, 264 N. Y. 465, 191 N. E. 516; *Sherwood v. United States*, 2 Cir., 112 F. 2d 587. The last two decisions imposing burdens on the sovereign, were reached in the face of Sec. 37 of the N. Y. General Construction Law, which defined "person" in such a way as normally to exclude the government.

Accordingly, the only principle of any validity that may be wrung from the cases is that the meaning of "person" depends upon the legislature's intent under the circumstances. *Ohio v. Helvering*, supra; *Matter of Bronson*, 150 N. Y. 1, 5, 44 N. E. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632. The exhaustive study of contemporary congressional debates relied on by the court below, D. C. S. D. N. Y., 31 F. Supp. 848, 851, and offered to us here appears inconclusive; neither Senator Sherman, who presented a first draft, nor Senator Hoar, who drafted the final act, appear to have given public consideration to the matter here involved. 35 Ill. L. Rev. 223. In cases of this sort, where speculation over actual intent is futile, we have attempted to estimate whether the injuries done to the sovereign by including it within the purview of the statute are so great that the legislature can be presumed not to have intended them. *Sherwood v. United States*, supra. Where the legislation is clearly remedial and not injurious to the sovereign, there seems no persuasive precedent for reading it restrictively.

It is virtually impossible to suggest a plausible reason why Congress, if it had thought of the matter, would have denied the triple-damage remedy to the United States and to the states, while granting it to every other natural or legal person in existence. The United States operates the largest business enterprise in the nation, and in its capacity as a purchaser of tires, it can be injured as much in its "business or property" as can any other entity. It should make no difference whether Section 7 is punitive or remedial in character. Before holding that a clear wrong should go unpunished merely

because it was committed against the United States, we should require strong evidence that the legislature intended so anomalous a result.

The definition of "person" in Section 8 does not settle the matter; that merely states what "person" shall be deemed to include, not what the word excludes. Thus it does not expressly include natural persons, but no one contends they are exempted from the operation of the Sherman Act. Again, Section 7 gives the remedy to any person against any other person or corporation. The fact that "corporation" is mentioned in one place and not in the other thus has no significance. The purpose, it seems, was not to restrict the remedy, but to make sure that the Act applied to corporations. Cf. 35 Ill. L. Rev. 223.

Davis v. Pringle, 268 U. S. 315, 45 S. Ct. 549, 69 L. Ed. 974, does not stand directly opposed to this conclusion. What the government sought in the *Davis* case was a special privilege unavailable to any other legal entity—the privilege of an absolute preference in the distribution of the assets of an insolvent estate. What the government seeks here is a right equal to and no greater than that conferred on every other person in the land. Moreover, there was convincing internal evidence of legislative intent in the *Davis* case. It may be noted that just one year after the *Davis* decision, the statute in question was amended so as explicitly to incorporate the definition there rejected. 44 Stat. 666, 11 U. S. C. A. § 104 (b) (7); see *In re C. D. Hauger Co.*, D. C. N. D. Tex., 54 F. 2d 117, 118.

I do not believe our answer to the question here forecloses discussion of that other question whether the United States is itself subject to suit under Section 7 for possible violations of the Sherman Act. There is no necessary rule of mutuality; Congress could confer the right to sue upon the United States and deny any sovereign liability. For my part I am willing to listen to argument upon the latter question if and when it becomes an actual issue. Now I content myself with saying that I am satisfied that the United States may sue under Section 7, and therefore I would reverse the decision below.

United States Circuit Court of Appeals, Second Circuit

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 31st day of August, one thousand nine hundred and forty.

Present: Hon. THOMAS W. SWAN, Hon. HARRIE B. CHASE, Hon. CHARLES E. CLARK, Circuit Judges.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

THE COOPER CORPORATION ET AL., DEFENDANTS-APPELLEES

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. ROBERTS, *Clerk.*

By A. M. BELL, *Deputy Clerk.*

Order for mandate

United States Circuit Court of Appeals, Second Circuit. Filed Aug. 31, 1940. D. E. Roberts, Clerk.

United States of America, Southern District of New York

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 124, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States of America, Plaintiff-Appellant, against The Cooper Corporation, et al., Defendants-Appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this thirty-first day of August, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

[SEAL]

D. E. ROBERTS, *Clerk.*

By A. M. BELL, *Deputy Clerk.*

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Supreme Court of the United States

Order allowing certiorari

Filed November 12, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED

OCT 3 1940

CHARLES ALMOND BAUFLEY
CLERK

484

No. —

In the Supreme Court of the United States

OCTOBER TERM, 1940

UNITED STATES OF AMERICA, PETITIONER

THE COOPER CORPORATION ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

THE COOPER CORPORATION ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Second Circuit entered in the above-entitled cause on August 31, 1940.

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 102) is reported in 31 F. Supp. 848. The opinion of the Circuit Court of Appeals (R. 115-118) has not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 31, 1940 (R. 119). The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States has the right to maintain an action under Section 7 of the Sherman Act to recover triple damages for injuries inflicted upon it by an illegal combination and conspiracy.

STATUTE INVOLVED

The pertinent provisions of the Sherman Act (c. 647, 26 Stat. 209, 15 U. S. C., Sec. 7, 28 U. S. C., Sec. 430a) follow:

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any district court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. The word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

STATEMENT

This is a suit brought by the United States under Section 7 of the Sherman Act against eighteen companies, engaged in the manufacture and sale of rubber tires, to recover triple damages for injuries alleged to have been inflicted upon the United States by an illegal combination and conspiracy to fix collusive prices. The bill of complaint was filed in the United States District Court for the Southern District of New York on February 20, 1939 (R. 1, 3-18).

The pertinent allegations of the bill of complaint may be summarized as follows:

The suit is brought by the United States in its capacity as a purchaser of commodities for consumption by the executive departments of the government (R. 3). Prior to August 17, 1936, the defendants entered into a combination and conspiracy to fix collusive prices for tires to be sold to the United States (R. 4-5). Pursuant to this combination and conspiracy, the defendants submitted to the Procurement Division of the Treasury Department sealed bids on the tire requirements of the United States for the period October 1, 1936, to March 31, 1937. These bids were identical to the penny on eighty-two different sizes of tires (R. 5-6). The United States purchased tires throughout the period October 1, 1936, to March 31, 1937, at prices fixed by the de-

fendants. These prices were higher than they would have been had the illegal conspiracy not existed (R. 6-8).

Acting pursuant to the conspiracy, the defendants thereafter again submitted sealed bids to the Treasury Department for the tire requirements of the United States for the next purchasing period, from April 1, 1937, to September 30, 1937. These bids were likewise identical to the penny on eighty-two different sizes of tires (R. 8-9). The United States purchased tires from the defendants at these collusive prices through the period from April 1, 1937, to September 30, 1937. These prices were substantially higher than the prices fixed by the conspiracy for the preceding period, October 1, 1936, to March 31, 1937, and were higher than they would have been if the conspiracy had not existed (R. 8-11).

Identical bids were again submitted by the defendants on the tire requirements of the United States for the period October 1, 1937, to March 31, 1938. The prices contained in the identical bids were substantially higher than the prices fixed by the combination and conspiracy for the preceding purchasing period and were likewise higher than they would have been in the absence of the combination and conspiracy (R. 11-12).

Confronted with continued identical bidding and progressive price increases, the Treasury Department sought the counsel of the Attorney General of the United States. The Attorney General ad-

vised the Treasury Department that the bids for the period October 1, 1937, to March 31, 1938, should be rejected on the ground that the bids were *prima facie* the result of a combination in restraint of trade (R. 12). The Procurement Division thereupon rejected the bids, advised the defendants of the grounds for the rejection, and invited the submission of new bids for the same period. The defendants, still acting pursuant to the illegal combination and conspiracy, again submitted sealed bids which were identical to the penny on eighty-two different sizes of automobile tires and which were also identical with the bids which previously had been rejected. The Treasury Department rejected these bids as collusive (R. 12-13).

Thereupon the Treasury Department determined that a public exigency existed and, pursuant to authority conferred by Section 3709 of the Revised Statutes (36 Stat. 861, 41 U. S. C., Sec. 5), negotiated a contract with Sears, Roebuck and Company for the government's tire requirements for the period October 1, 1937, to March 31, 1938 (R. 13-14).

When invited to bid on the government's tire requirements for the next purchasing period April 1, 1938, to September 30, 1938, the defendants submitted competitive bids. As a result, the United States was able to purchase tires for this period from the defendants at prices which were substantially lower than the prices at which it had purchased its tires for the two preceding periods—

October 1, 1936, to March 31, 1937, and April 1, 1937, to September 30, 1937—and which were also lower than the prices at which the government had purchased its tires from Sears, Roebuck and Company during the period October 1, 1937, to March 31, 1938 (R. 14-15).

Between October 1, 1936, and September 30, 1938, there was no decline in the retail prices of tires to the general public throughout the United States. Had it not been for the conspiracy the government would have been able to purchase tires for the three periods—October 1, 1936, to March 31, 1937; April 1, 1937, to September 30, 1937; and October 1, 1937, to March 31, 1938—at prices at least as low as the prices at which it purchased tires during the period April 1, 1938, to September 30, 1938 (R. 15).

The damages inflicted upon the United States amounted to \$351,158.21 and the bill of complaint asks judgment for three times this amount, or \$1,053,474.63 (R. 16-17).

The defendant F. G. Schenuit Rubber Company is no longer a party to the suit. On April 27, 1939, the District Court entered an order vacating and setting aside the service upon this defendant (R. 1).

All of the remaining defendants filed motions to dismiss on the ground that the bill of complaint failed to state a claim against the defendants (R. 101). The sole ground urged by defendants in support of their motion was that the United States

is not a "person" within the meaning of Section 7 of the Sherman Act. The District Court upheld the defendants' contention (R. 102-108) and dismissed the complaint (R. 109).

An appeal was taken to the United States Circuit Court of Appeals for the Second Circuit; on August 8, 1940, that court, with Judge Clark dissenting, handed down a decision affirming the judgment of the District Court (R. 119).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that the United States has no right to maintain an action under Section 7 of the Sherman Act, and

(2) In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. This case raises an issue of public importance which this Court has never decided. Because this is the first action of its kind ever brought by the United States, no other Circuit Court of Appeals has ever considered the issue of statutory construction which it raises. It is submitted that the public interest will be served by a determination by this Court as to whether the United States is a "person" within the meaning of Section 7 and entitled to maintain a suit for triple damages.

2. The question is one of practical importance. The federal government is the largest purchaser of goods in the United States. An authoritative study

shows that in a recent twelve-month period the dollar value of purchases by the United States amounted to more than \$860,000,000.¹ It is reasonable to anticipate that these purchases will increase in amount because of the defense program in which the federal government is now engaged. The construction of Section 7 adopted by the court below leaves the United States powerless to recover damages for injuries inflicted upon it as a purchaser of goods by illegal combinations and conspiracies. The provisions of the antitrust laws providing for criminal proceedings and suits in equity afford no remedy for the United States in cases where circumstances have compelled it to purchase goods on the basis of collusive prices or where it is faced, as it was in this case, with persistent collusive bidding. When goods are required at once, the United States cannot postpone its purchases until the final disposition of a criminal proceeding or a suit in equity. Once goods have been purchased at inflated and non-competitive prices, neither an indictment

¹ This study is entitled *Study of Government Purchasing Activities, Part I, Magnitude and Characteristics of Government Purchasing, Part II, Survey of Practice of Identical Bidding for Government Purchase Contracts*. It was prepared by the Treasury Department and is embodied in a report filed with the Temporary National Economic Committee. The study covered the period from December 1937 to November 1938. The figure of \$860,000,000 is found in a summary of the report contained in a press release of the Temporary National Economic Committee issued January 2, 1940 (T. N. E. C. Release No. 22, December 28, 1939).

nor an injunction will compensate the United States for the damages suffered.

3. The decision of the Circuit Court of Appeals gives a technical and highly artificial meaning to Section 7 of the Sherman Act. It rests, moreover, upon asserted rules of statutory construction which are in conflict with the decisions of this Court.

The majority of the Circuit Court of Appeals assumes that a remedial statute which refers only to "persons" and makes no express reference to the United States confers no remedy upon the United States (R: 116). No such general rule of statutory construction has ever been applied by this Court, which has consistently held that the word "person" in a statute may include the United States and other bodies politic. In each case the issue turns upon the context in which the word is used and the purpose of the particular statutory provision involved. *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 91-92; *Ohio v. Helvering*, 292 U. S. 360, 370-371; *Stanley v. Schwalby*, 147 U. S. 508, 517. Cf. *Davis v. Pringle*, 268 U. S. 315.

The Circuit Court of Appeals also ignored the familiar and historic canon of construction that the state takes the benefits of a remedial statute even though not expressly named. *Dollar Savings Bank v. United States*, 19 Wall. 227, 239; *Commonwealth v. The Boston & Maine Railroad*, 3 Cushing 25, 45 (1849); *Magdalen College Case*, 11 Coke Rep. 66 b, 68 b; Black, *Interpretation of Laws*, (1896),

p. 122; Chitty, *Prerogatives of the Crown*, p. 382; Bacon's Abridgement, *Prerogative*, E. 5, Vol. 8 (Bouvier's Ed., Philadelphia, 1852), p. 92.

The court below likewise erred in holding that Section 8 of the Sherman Act was intended to restrict the meaning of Section 7. The definition of "person" contained in Section 8 was intended to amplify whatever meaning might properly be given to the word if Section 7 had stood alone. Section 7 standing alone is broad enough to include the United States, and Section 8 cannot properly be construed as intended to limit that meaning. Certainly, if Congress had intended to exclude the United States from the scope of Section 7, it would have done so expressly and without ambiguity. The majority of the Circuit Court of Appeals did not attempt to support their construction of Sections 7 and 8 by reference to the legislative history of the Sherman Act. That history supplies no support to the contention that Congress deliberately deprived the United States of a remedy which is available to every other purchaser of goods.

Finally, if Section 7 is limited by the language of Section 8, then the United States falls within the scope of the latter section because it is a corporation existing under and authorized by the laws of the United States. *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 91-92; *Van Brocklin v. Tennessee*, 117 U. S. 151; *Ex parte Siebold*, 100 U. S. 371, 392; *McCulloch v. Maryland*, 4 Wheat.

316, 406; *Cotton v. United States*, 11 How. 229, 231; *Denver & R. G. R. Co. v. United States*, 241 Fed. 614 (C. C. A. 8th); *United States v. Hill*, 60 Fed. 1005 (C. C. A. 6th); *United States v. Maurice*, 26 Fed. Cas. 1211, 1216 (C. C. D. Va.); *Dixon v. United States*, 7 Fed. Cas. 761 (C. C. D. Va.).

CONCLUSION

It is respectfully submitted that, for the reasons stated, this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

OCTOBER, 1940.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 484

UNITED STATES OF AMERICA, PETITIONER

v.

THE COOPER CORPORATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of New York (R. 102) is reported in 31 F. Supp. 848. The opinion of the Circuit Court of Appeals (R. 115-118) is reported in 114 F. (2d) 413.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 31, 1940 (R. 119). The petition for a writ of certiorari was filed October 3, 1940, and was granted November 12, 1940. The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States can maintain an action under Section 7 of the Sherman Act to recover triple damages for injuries inflicted upon it by an illegal combination and conspiracy.

STATUTE INVOLVED

The pertinent provisions of the Sherman Act (c. 647, 26 Stat. 210, 15 U. S. C. A., Secs. 15 and note, 7) follow:

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any district court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. The word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

STATEMENT

This is a suit brought by the United States under Section 7 of the Sherman Act against eighteen companies engaged in the manufacture and sale of rubber tires to recover triple damages for injuries inflicted upon the United States by an illegal combination and conspiracy to fix collusive prices. The bill of complaint was filed in the United States District Court for the Southern District of New York on February 20, 1939 (R. 1, 3-18).

The pertinent allegations of the bill of complaint may be summarized as follows:

The suit is brought by the United States in its capacity as a purchaser of commodities for consumption by the executive departments of the Government (R. 3). Prior to August 17, 1936, the defendants entered into a combination and conspiracy to fix collusive prices for tires to be sold to the United States (R. 4-5). Pursuant to this combination and conspiracy, the defendants submitted to the Procurement Division of the Treasury Department sealed bids on the tire requirements of the United States for the period October 1, 1936, to March 31, 1937. These bids were identical to the penny on eighty-two different sizes of tires (R. 5-6). The United States purchased tires throughout the period October 1, 1936, to March 31, 1937, at prices collusively fixed by the defendants. These prices were higher than they

would have been had the illegal conspiracy not existed (R. 6-8).

Acting pursuant to the conspiracy, the defendants thereafter again submitted sealed bids to the Treasury Department for the tire requirements of the United States for the next purchasing period which extended from April 1, 1937, to September 30, 1937. These bids were likewise identical to the penny on eighty-two different sizes of tires (R. 8-9). The United States purchased tires from the defendants at these collusive prices through the period from April 1, 1937, to September 30, 1937. These prices were substantially higher than the prices fixed by the conspiracy for the preceding period, October 1, 1936, to March 31, 1937, and were higher than they would have been if the conspiracy had not existed (R. 8-11).

Bids were again submitted by the defendants on the tire requirements of the United States for the period October 1, 1937, to March 31, 1938. These bids, too, were identical to the penny on eighty-two different sizes of tires (R. 13). The prices contained in the identical bids were substantially higher than the prices fixed by the combination and conspiracy for the preceding purchasing period and were likewise higher than they would have been in the absence of the combination and conspiracy (R. 11-12).

Confronted with continued identical bidding and progressive price increases, the Treasury Department sought the counsel of the Attorney General of the United States. The Attorney General advised the Treasury Department that the bids for the period October 1, 1937, to March 31, 1938, should be rejected on the ground that the bids were prima facie the result of a combination in restraint of trade (R. 12). The Procurement Division thereupon rejected the bids, advised the defendants of the grounds for the rejection, and invited the submission of new bids for the same period. The defendants, still acting pursuant to the illegal combination and conspiracy, again submitted sealed bids which were identical to the penny on eighty-two different sizes of automobile tires and which were also identical with the bids which previously had been rejected. The Treasury Department rejected these bids as collusive (R. 12-13).

Thereupon the Treasury Department determined that a public exigency existed and, pursuant to authority conferred by Section 3709 of the Revised Statutes (36 Stat. 861, 41 U. S. C. § 5), made a contract with Sears, Roebuck and Company for the Government's tire requirements for the period October 1, 1937, to March 31, 1938. The prices were lower than the identical bids but higher than they would have been in the absence of the conspiracy (R. 13-14).

When invited to bid on the Government's tire requirements for the next purchasing period, April 1, 1938, to September 30, 1938, the defendants submitted competitive bids. As a result, the United States was able to buy tires for this period from the defendants at prices which were substantially lower than the prices at which it had purchased its tires for the two preceding periods—October 1, 1936, to March 31, 1937, and April 1, 1937, to September 30, 1937—and which were also lower than the prices at which the Government had purchased its tires from Sears, Roebuck and Company during the period October 1, 1937, to March 31, 1938 (R. 14-15).

Between October 1, 1936, and September 30, 1938, there was no decline in the retail prices of tires to the general public throughout the United States. Had it not been for the conspiracy the Government would have been able to purchase tires for the three periods—October 1, 1936, to March 31, 1937; April 1, 1937, to September 30, 1937; and October 1, 1937, to March 31, 1938—at prices at least as low as the prices at which it purchased tires during the period April 1, 1938, to September 30, 1938 (R. 15).

The damages inflicted upon the United States amount to \$351,158.21 and the bill of complaint asks judgment for three times this amount, or \$1,053,474.63 (R. 16-17).

The defendants filed motions to dismiss on the ground that the bill of complaint failed to state a claim against the defendants (R. 101).¹ The sole ground urged by defendants in support of their motion was that the United States is not a "person" within the meaning of Section 7 of the Sherman Act. The District Court upheld the defendants' contention (R. 102-108) and dismissed the complaint (R. 109).

An appeal was taken to the United States Circuit Court of Appeals for the Second Circuit; that court, with Judge Clark dissenting, affirmed the judgment of the District Court (R. 119).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that the United States has no right to maintain an action under Section 7 of the Sherman Act, and

(2) In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

Section 7 of the Sherman Act gives the United States the right to maintain an action for triple damages. The words "any person" in the section are broad enough to include the United States be-

¹ The defendant F. G. Schenuit Rubber Company is no longer a party to the suit. On April 27, 1939, the District Court entered an order vacating and setting aside the service upon this defendant (R. 1).

cause it is a juristic person and as such is ordinarily entitled to all legal remedies available to anyone else. *Dugan v. United States*, 3 Wheat. 172, 181; *United States v. Gear*, 3 How. 120; *Cotton v. United States*, 11 How. 228, 231.

Section 7 is not qualified or limited in any way by Section 8. That section is not restrictive in form or in effect. It was added for the purpose of making certain that corporations would be subject to the Act and not for the purpose of narrowing the scope of Section 7. It adds nothing to the meaning which Section 7 would have if it stood alone. Any other construction of Section 8 should be rejected because it would turn words of inclusion into words of crippling limitation. Moreover, it seems clear that if Congress had intended to exclude the United States in Section 8 it would have done so expressly and without ambiguity.

Inasmuch as Section 7 is not qualified or limited by Section 8, the words "any person" in Section 7 should be given the broad meaning which Congress intended. The fact that Section 7 does not refer expressly to the United States is not controlling. *Stanley v. Schwalby*, 147 U. S. 508, 517; *Helvering v. Stöckholms &c. Bank*, 293 U. S. 84, 91-92; *Nardone v. United States*, 302 U. S. 379. The statute is remedial and should be liberally construed. Because it confers a general right or remedy the United States is entitled to its benefits even though not expressly named. *Dollar Savings Bank v. United States*, 19 Wall. 227, 239.

The United States is the largest single purchaser of goods in the country. In a recent twelve months' period it expended more than \$860,000,000 in the purchase of goods. The amount of its purchases will be greatly increased by the defense program. The expenditure of more than \$16,000,000,000 has been authorized and contracts calling for the payment of more than \$10,000,000,000 have already been awarded in furtherance of that program. The fact that the United States is the largest purchaser of goods in the country and that its purchases are paid for with public funds are persuasive reasons for giving to it the remedy created by Section 7. Experience has shown that the United States, like any other purchaser, can be victimized by combinations and conspiracies. The other remedies given by the Act to the United States in its sovereign or governmental capacity do not enable the United States to deal with the problem of collusive bidding nor do they protect it when it has been required by circumstances to purchase at collusive and noncompetitive prices. There is no force in the argument that the remedies given to the United States by way of indictment or injunction are exclusive; those remedies cannot protect its proprietary interests or compensate it for the damages which respondents have inflicted upon it.

If Section 8 is to be regarded as limiting or qualifying Section 7 then the words of Section 8

should be construed as including the United States. The United States can properly be regarded as a corporation or an association existing under an authority authorized by the laws of the United States. The definition of "person" in Section 8 is obviously drawn to include all kinds of corporations and associations. The purpose of the definition is not served by drawing artificial distinctions between the United States and other corporations and associations.

The arguments advanced by respondents in support of their position are without merit. The legislative history of the antitrust laws does not support the conclusion that Congress intended to discriminate against the United States and to deprive it of a remedy open to every other juristic person. The decision in *Davis v. Pringle*, 268 U. S. 311, relied upon by respondents, is not controlling here. There the United States was seeking priority in the distribution of the assets of an insolvent estate. Here the United States seeks not priority but equality of treatment with all other juristic persons. Furthermore, the statute involved in *Davis v. Pringle*, 268 U. S. 315, gave to the United States a limited right of priority and the Court regarded this circumstance as indicating that Congress did not intend to give any broader right of priority. Here, unless the United States can sue under Section 7, it is without a remedy and cannot recover in any way for the damages which respondents have inflicted upon it. The subsequent legislative

history of the Bankruptcy Act and subsequent decisions of this Court create grave doubt as to whether *Davis v. Pringle*, 268 U. S. 315, lays down any principle which now possesses vitality.

Failure of the United States to assert its rights under Section 7 is not an administrative interpretation of the statute which is entitled to any weight whatsoever. *Union Stock Yard Co. v. United States*, 308 U. S. 213, 224; *Louisville & N. R. Co. v. United States*, 282 U. S. 740, 757, 759; *Kansas City So. Ry. Co. v. United States*, 252 U. S. 147, 151.

ARGUMENT

I

SECTION 7 OF THE SHERMAN ACT CONFERS UPON THE UNITED STATES THE SAME REMEDY WHICH IT GIVES TO EVERY OTHER JURISTIC PERSON; ANY OTHER CONSTRUCTION OF THE SECTION IS INCONSISTENT WITH THE BASIC STATUTORY PURPOSE

The only issue in this case is whether the United States can bring an action under Section 7 of the Sherman Act to recover triple damages for injuries inflicted upon it by an illegal conspiracy. In bringing the action, the United States does not assert any sovereign or prerogative right. It seeks to exercise a remedy which is admittedly available to every other juristic person. Its purpose in doing so is not to punish or to penalize the respondents but to obtain compensation for actual damages

amounting to more than \$350,000 which they have wrongfully inflicted upon the United States.

The position of the United States in this case rests upon customary and well-established principles. The right of the Government to protect its property and to recover compensation for damages inflicted upon its proprietary interests has long been recognized. In this respect it stands upon the same footing as any other owner of property. If respondents had stolen or destroyed Government property or had victimized the United States and its taxpayers by any of the familiar methods of force, fraud, or deceit, their liability in damages would be unquestioned. Here they seek to avoid that liability by taking refuge in a highly technical and artificial construction of Section 7 of the Sherman Act. The asserted construction leaves the United States powerless to recover compensation for the deliberate damage which respondents have inflicted upon it, and thus denies to the United States a measure of protection given by the statute to every other juristic person, even including corporations organized under the laws of foreign countries. This result is so anomalous that only the most explicit and preemptory command by Congress can justify its adoption. That command cannot be found in the Sherman Act; the language of the statute, read in the light of the purpose which the Act was intended to achieve, neither requires nor justifies the construction of

the statute which the respondents now urge upon this Court.

Section 7 provides broadly that any person who is injured by an illegal combination or conspiracy shall recover triple damages. The language of the section is sweeping and unqualified. Considered alone, and without reference to Section 8, this language confers a remedy upon any juristic person injured by an illegal combination or conspiracy.² The use of the two words "any person" shows that Congress intended to confer a remedy upon every juristic person, no matter of what description. It is doubtless true that by the use of more words Congress could have given more precise expression to its intent. But there are no two words in the language broader in their scope or better designed to achieve the congressional purpose than the words "any person." If they fail to do so it is not because of any intent on the part of Congress to limit the class to which it gave a remedy but simply because there is no concise expression in the language adequate to accomplish the broad intent of Congress.

The United States is a juristic person with legal rights, duties, powers, and privileges. It may make contracts to purchase goods, it may hold and convey property, and it may sue and be sued in its own name. Because it is a juristic person, the

² The question of whether the language of Section 7 is qualified or limited in any way by Section 8 or by other provisions of the statute is discussed at pages 28-30, *infra*.

United States is ordinarily entitled to all of the legal remedies available to other persons even in the absence of an explicit statutory grant of those remedies. *Dugan v. United States*, 3 Wheat. 172, 181; *United States v. Gear*, 3 How. 120; *Cotton v. United States*, 11 How. 228, 231.³ Accord: *Dollar*

³ In *Dugan v. United States*, 3 Wheat. 172, the Court held that the endorsement of a bill of exchange to the Treasurer of the United States entitled the United States to maintain an action on the bill against a prior endorser, even though there was no express statutory authorization for the suit.

In *United States v. Gear*, 3 How. 120, the right of the United States to maintain an action of trespass for taking ore from lead mines located on public lands was not questioned.

In *Cotton v. United States*, 11 How. 228, an action of trespass was brought against the defendant for cutting and carrying away trees from the public land. The Court rejected the arguments that the only remedy was by indictment and that the United States has no common-law remedies for private wrongs. The Court said (p. 231):

"Every sovereign State is of necessity a body politic, or artificial person, and as such capable of making contracts and holding property, both real and personal. * * * But the powers of the United States as a sovereign, dealing with offenders against their laws, must not be confounded with their rights as a body politic. It would present a strange anomaly, indeed, if, having the power to make contracts and hold property as other persons, natural or artificial, they were not entitled to the same remedies for their protection. Although as a sovereign the United States may not be sued, yet as a corporation or body politic they may bring suits to enforce their contracts and protect their property, in the State courts, or in their own tribunals administering the same laws. As an owner of property in almost every State of the Union, they have the same right to have it protected by the local laws that other persons have."

Savings Bank v. United States, 19 Wall. 227;
United States v. Chamberlin, 219 U. S. 250.

The fact that the statute confers the remedy broadly on "any person" and that the United States is admittedly a juristic person should establish the right of the United States to maintain this suit unless it is to be assumed either (1) that the word "person" in Section 7, considered without reference to Section 8, refers only to "natural" persons and thus excludes entirely the idea of juristic personality, or (2) that even if the word "person" includes juristic persons the Court must nevertheless construe the word as excluding the United States. Neither assumption can be supported. Even in the absence of the definitions in Section 8, Congress could not have intended the word "person" in Section 7 to mean solely a "natural" person. No rule of statutory construction requires that the word be given this restricted meaning.⁴ The true rule is that the meaning of

⁴ As long ago as 1833 a broader meaning of the word was adopted by statute in England. Thus in 3 & 4 Wm. IV, c. 74, sec. 1, it was provided:

"The Word 'Person' shall extend to a Body Politic, Corporate, or Collegiate, as well as an Individual."

This construction was affirmed by the Interpretation Act of 1889, 52 & 53 Vict., c. 63, sec. 19, which provided:

"In this Act and in every Act passed after the commencement of this Act the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

And see Dewey, *The Historic Background of Corporate Legal Personality*, 35 Yale L. J. 655, 656-657.

"person" depends in each case upon the intent of the legislature as determined by the circumstances in which the word is used. See *Ohio v. Helvering*, 292 U. S. 360, 370-371; *Nardone v. United States*, 302 U. S. 379, 383-384.

If we consider the character and purpose of the statute in which Section 7 stands, there can be no doubt as to the incongruity of construing "person" as meaning only a "natural" person. The Sherman Act has been described as "a charter of freedom" (*Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 359) and as "a broad enactment prohibiting unreasonable restraints upon interstate commerce" (*United States v. Borden Co.*, 308 U. S. 188, 199). A statute which attempts to deal in sweeping terms with economic and industrial problems can hardly be construed as applicable only to individual men and women. It must necessarily be regarded as imposing duties and conferring remedies upon all of the various forms of organization which exist in the business and economic world.⁵ Even in the absence of the definitions contained in Section 8, it would be necessary to read this

⁵ Cf. *United Mine Workers of America v. Coronado Co.*, 259 U. S. 344, where this Court, in holding that an unincorporated labor union could be sued under Section 7, said (page 392):

"Congress was passing drastic legislation to remedy a threatening danger to the public welfare, and did not intend that any persons or combinations of persons should escape its application."

broader meaning into Section 7 if the purpose of the statute was to be achieved.

Support for this conclusion is supplied by the fact that four years after the passage of the Sherman Act, Congress passed the Wilson Tariff Act which made illegal combinations or conspiracies to restrain the importation of goods in foreign commerce (Act of August 27, 1894, c. 349, 28 Stat. 509, 15 U. S. C. A., Secs. 8-11, 15 and note). That Act contained a triple-damage provision which, following the form of Section 7, conferred the remedy upon "any person who shall be injured in his business or property by any other person or corporation by reason of any thing forbidden or declared to be unlawful by this Act * * *." That statute contains no provision, similar to Section 8, defining "person" as including a corporation or an association, but it can hardly be suggested that the remedy which it gives is available only to "natural" persons.

Since, then, the word "person" in Section 7 cannot mean only a "natural" person, we may now consider whether there is any reason why the United States should not fall within the class of juristic persons given a remedy by the section. There is no categorical canon of construction which requires the United States to be specifically named if it is to enjoy the benefits or remedies conferred by a statute. On the contrary, the United States has frequently been held to be within beneficial statutory provisions which apply only to "per-

sons" and make no express reference to the United States. *Stanley v. Schwalby*, 147 U. S. 508, 517; *Helvering v. Stockholms &c. Bank*, 293 U. S. 84, 91-92; *Nardone v. United States*, 302 U. S. 379. Cf. *Ohio v. Helvering*, 292 U. S. 360, 370-371.⁶

In *Nardone v. United States*, 302 U. S. 379, 383-384, this Court in considering the canon of interpretation that the general words of a statute do not include the Government pointed out that it is applicable in only two classes of cases: (1) where the statute if not so limited would deprive the sovereign of a recognized prerogative, right, title; or interest ^{6a} and (2) where a reading of the statute

⁶ The state courts have likewise frequently interpreted the word "person" standing alone in a statute as including political entities. *Republic of Honduras v. Soto*, 112 N. Y. 310 (foreign nation held to be a "person" within a statute requiring nonresident persons to provide security for costs in litigation). Accord: *Ohio ex rel. Fulton v. Saal*, 239 App. Div. 420, *appeal dismissed on other grounds*, 264 N. Y. 465; *Giddings v. Holter*, 19 Mont. 263 (the United States is a person within the terms of a covenant of quiet enjoyment which referred to claims by "all and every person or persons"); *Martin v. The State*, 24 Tex. 61, 68 (the State of Texas held to be a person within the meaning of a statute which made it a crime to make a false entry with the intent to defraud "any person"); *County of Lancaster v. Trimble*, 34 Neb. 752, 756 (a county held to be a person within the meaning of a statute which authorized "any person" to foreclose a tax lien); *Peters v. Grubb*, 21 Pa. 455 (a state held to be a person within the meaning of a covenant of quiet enjoyment which referred to claims or molestation by any "person or persons"). And see Black on *Interpretation of Laws* (1896), p. 122.

^{6a} The United States will rely upon this aspect of the rule in *United States v. Sherwood*, No. 500, this Term.

which would include the Government or its officers would work obvious absurdities. It can hardly be suggested that this case falls in either category.

Section 7 is intended to provide compensation for injuries to property, and is remedial in purpose.⁷ The rule is that if the statute is remedial,

⁷ The federal courts have almost uniformly taken this view of Section 7. Thus, for the purpose of applying statutes of limitation, the courts have held that an action under Section 7 is remedial and not an action to recover a penalty or forfeiture. *City of Atlanta v. Chattanooga Foundry*, 101 Fed. 900 (C. C. A. 6th), *reversed on other grounds*, 127 Fed. 23 (C. C. A. 6th), *affirmed* 203 U. S. 390; *Hansen Packing Co. v. Swift & Co.*, 27 F. Supp. 364, 367 (D. C. S. D. N. Y. 1939), *Jones & Co. v. West Publishing Co.*, 270 Fed. 563, 566 (C. C. A. 5th); *Shelton Electric Co. v. Victor Talking Mach. Co.*, 277 Fed. 433 (D. C. N. J. 1922).

The same view has been taken in cases involving the question of whether the right to sue under Section 7 survives death. *Sullivan v. Associated Billposters, etc.*, 6 F. (2d) 1000, 1009 (C. C. A. 2d); *Imperial Film Exch. v. General Film Co.*, 244 Fed. 985 (D. C. S. D. N. Y. 1915); *Moore v. Backus*, 78 F. (2d) 571 (C. C. A. 7th).

See also *Baush Machine Tool Co. v. Aluminum Co.*, 63 F. (2d) 778, *cert. denied*, 289 U. S. 739, holding that an action under Section 4 of the Clayton Act for triple damages is not a suit for penalty and, hence, that a bill of discovery may be maintained in aid of the suit.

The cases are collected and examined in *Are Threefold Damages Under the Anti-Trust Act Penal or Compensatory?* by Lawrence Vold, 28 Ky. L. J. 117-159. The author concludes (p. 159):

"As already shown, the threefold damage provision is here compensatory in its nature, in liquidating compensation for accumulative intangible harm going beyond the ordinarily recoverable legal damage to the business or property."

See also *Right of United States to Sue for Treble Damages*, 89 U. of Pa. L. Rev. 243-245, fn. 10.

or if it confers general rights, the United States may enjoy its benefits even though not expressly named.⁸ *Dollar Savings Bank v. United States*, 19 Wall. 227, 239; *United States v. Chamberlin*, 219 U. S. 250, 260-261; *The Northern No. 41*, 297 Fed. 343, 344, 345 (D. C. S. D. Fla.); *Commonwealth v. The Boston & Maine Railroad*, 3 Cush. 25, 45 (1849); *Magdalen College Case*, 11 Coke Rep. 66b; Black, *Interpretation of Laws* (1896), p. 122; Chitty, *Prerogatives of the Crown*, p. 382; *Bacon's Abridgement, Title Prerogative, E, 5, Vol. 8* (Bouvier's Ed., Philadelphia 1852), p. 92.

Thus, we may dismiss the argument that there is any rule of construction or interpretation which requires the Court to hold that the words "any person" do not confer upon the United States the benefit of the statute. Indeed, if the rules of construction, standing alone, can be said to throw any light upon the issue they appear affirmatively to support the conclusion that the words include the United States within their scope.

This interpretation of the section is consistent with the plan of the statute as a whole. Congress intended that, at least three different remedies should be available against persons who engage in illegal combinations and conspiracies and that these remedies might be prosecuted concurrently.

⁸ In *Nardone v. United States*, 302 U. S. 379, the word "person" was held to include the United States within a prohibition against wire tapping, although the decision operated to restrain the activities of the Government.

See *Standard Sanitary Mfg. Co., v. United States*, 226 U. S. 20, 52. Persons who conspire to restrain trade can be prosecuted criminally, they may be enjoined by a court of equity, and, finally, they may be liable in damages at the suit of any person who has been injured by their illegal activities.⁹ Each of these three remedies is designed to serve a different purpose. Of the three remedies, only the one given by Section 7 provides compensation for injuries to proprietary interests. In cases where injuries have been inflicted upon private citizens this remedy admittedly may be pursued concurrently with the other remedies conferred by the act.

It may fairly be concluded that Congress intended that in the case of each violation the United States should have the power to punish or to prevent, and the injured person the power to recover for any damages inflicted in violation of the statute. It is not to be supposed that Congress intended that the remedies should cease to be concurrent merely because the person injured was the United States. Certainly Congress could not have intended that it should be any less dangerous for respondents to victimize the United States by an illegal conspiracy than it should be for them to injure any one else, nor could it have intended to

⁹ Section 6 of the Act also permits the United States to seize and condemn property which is being transported in interstate or foreign commerce pursuant to an illegal combination or conspiracy.

discriminate against the United States by depriving it of a remedy that is available to every other person. In *Wilder Mfg. Co. v. Corn Products Co.*, 236 U. S. 165, 174, this court pointed out that the remedies given the Sherman Act are "co-extensive" with the "broad conceptions of public policy" which underlie the statute. If, as the provisions of the statute indicate, one of the conceptions of public policy upon which it rests is that every juristic person shall be entitled to compensation for damages inflicted by violations of the act and that this remedy may be pursued concurrently with whatever other remedies the Government exercises in its sovereign capacity, we must conclude that to deny the United States the right to damages is to do violence to the statutory plan.

Respondents can point to no conception of public policy, broad or narrow, which justifies denying the United States the right to protect its financial interests or which can serve in any measure as a basis for an arbitrary distinction between the United States and other juristic persons who purchase goods. In this respect the United States should stand on precisely the same footing as any other purchaser. It is true that its purchases are larger in amount than those made by any other single person or organization and that they are paid for out of the public funds. But these circumstances supply no support for respondents' arguments; rather they are additional reasons for construing the act so as

to give the United States the same remedy which is available to every other person. An authoritative study made for the Temporary National Economic Committee shows that in a recent twelve months' period the total purchases of goods by the Federal Government and its agencies amounted to \$913,401,724.91.^{9a} The dollar volume of Government purchases has been strikingly increased by the national defense program. By the end of December 1940, Congress had authorized the expenditure of upwards of 16 billion dollars in furtherance of that program, and contracts had actually been awarded for the purchase of goods which called for the payment of more than 10 billion dollars.¹⁰

Congress has adopted legislation designed to insure that Government purchases shall be made in a free market and at competitive prices. Section 3709 of the Revised Statutes (36 Stat. 861, 41 U. S. C. Sec. 5) requires that, except in cases of public exigency, all purchases and contracts for supplies shall be made on the basis of bids submitted in response to public advertisements. It was enacted

^{9a} Temporary National Economic Committee Monograph No. 19, *Government Purchasing—An Economic Commentary* (United States Government Printing Office 1940), at page 145. The period covered ran from December 1937 through November 1938.

¹⁰ *The National Defense Advisory Commission—Functions and Activities*, issued by the Advisory Commission to the Council for National Defense, December 28, 1940, (United States Government Printing Office), pages 3, 10.

to protect the purchasing activities of the Government. *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 126. This congressional policy embodied in Section 3709¹¹ is completely frustrated when bidders agree among themselves upon collusive, arbitrary, and non-competitive prices. It would be anomalous indeed to construe Section 7 in a manner which would contradict rather than implement the purpose of Section 3709. Even when contracts are let by negotiation rather than by competitive bidding, it seems apparent that Congress intended that the purchases should be made in a free market.

The problem of collusive bids is serious and recurrent; for many years it has occupied the attention of purchasing agencies and the law officers of the Federal Government. The study made for the Temporary National Economic Committee, which has been referred to above, shows that of \$913,401,724.91 expended by the Government in a 12-month period, \$87,326,426, or approximately 9.6 percent, was spent in purchases which involved identical bids.¹¹ It should be pointed out that this figure is not necessarily indicative of the extent of the practice of submitting collusive and noncompetitive bids. It is probable that in some

¹¹ Temporary National Economic Committee Monograph No. 19, *Government Purchasing—An Economic Commentary* (United States Government Printing Office 1940). For the figures, see pages 312-313. For an analysis and description of different categories of identical bids, see page 31.

instances collusive bids were submitted which were not identical in amount.¹² It is also significant that the study refers to rubber tires as one of the commodities with respect to which "the problem of identical bidding has at times been acute."¹³

The construction of Section 7 adopted by the court below leaves the United States powerless to recover damages for injuries inflicted upon it by illegal combinations and conspiracies and deprives it of an effective weapon for dealing with collusive bids. It is true that in theory the United States is free to reject bids which appear to be based upon illegal combinations and conspiracies. But the need for supplies is often so urgent and immediate that as a practical matter rejection is impossible. This is particularly true at the present time with respect to supplies and materials required by the Army and Navy. The exigencies of the situation do not permit the Government to indulge in the extensive investigation or the prolonged bargaining which may be necessary to break down a combination or conspiracy designed to compel purchases at collusive and noncompetitive prices. When, as is often the case in the present national emergency, it is necessary for

¹² For detailed testimony with respect to the difficulties which Government agencies have had with collusive bids, see *id.*, at 35-38, 99-115.

¹³ The other two commodities referred to as falling into the same classification are cement and steel. *Id.* at 36.

contracts to be let by negotiation rather than by bidding, the opportunity for exposing collusive action is particularly restricted. Furthermore, in many cases no source of supply is available except that of persons who are parties to the combination and conspiracy. As in the instant case, the rejection of bids may simply lead to the submission of another set of identical bids equally collusive. For all of these reasons the Government, in most circumstances, has no choice but to purchase goods, endure whatever damage the conspiracy may inflict, and later to seek compensation for the injury it has suffered.¹⁴

The provisions of the antitrust laws providing for criminal proceedings and for suits in equity afford no remedy to the United States in cases where it has been required by circumstances to purchase goods on the basis of noncompetitive and collusive prices or where it is faced with persistent collusive bidding. If the goods are required at once, the United States cannot await the final disposition of a criminal proceeding or a suit

¹⁴ Although at first sight it might seem that the magnitude of its purchases and the possession of various governmental powers would place the United States in an advantageous bargaining position it is by no means certain that this is the case. There is some reason to believe that in many respects the Government is at a disadvantage in its purchasing operations as compared with private purchasers. See *id.* at 35-37. And compare the circumstances underlying the litigation in *United States v. Bethlehem Steel Corp.*, Nos. 362-363, this Term.

in equity. Once the goods have been purchased at inflated and noncompetitive prices, neither an indictment nor an injunction will compensate the United States for the damage it has suffered. An injunction prohibits only future violations and carries with it no right to damages. Under the criminal provisions of the statute the maximum fine which may be imposed is \$5,000 and the maximum period of imprisonment is one year. Even if these sanctions should be enforced in the instant case, they could not compensate the United States for the damages which wrongful acts have inflicted upon it. Indeed, it is obvious that they were never intended for this purpose.

II

THE OTHER PROVISIONS OF THE SHERMAN ACT DO NOT LIMIT OR QUALIFY SECTION 7 SO AS TO DEPRIVE THE UNITED STATES OF THE RIGHT TO MAINTAIN THIS ACTION

In deciding that the United States cannot maintain a suit under Section 7 the majority of the Circuit Court of Appeals relied upon the fact that Section 8 of the statute defines "person" without referring to the United States¹⁵ (R. 115-116). This view assumes that Section 8 was intended to qualify or to limit in some way the class of juris-

¹⁵ The majority of the Circuit Court of Appeals also were of the view that the United States could not properly be included in the word "person" in Section 7 because that would mean that the United States might also be sued under the

tic persons entitled to the remedy given by the broad language of Section 7. This assumption rests upon a misunderstanding of the purpose and effect of Section 8. That section is not a restrictive provision; it is not even restrictive in form. It provides that the word "person" wherever used in the act *shall be deemed to include* corporations and associations existing under or authorized by the laws of either the United States, the Territories, any state, or any foreign country. Thus the provision in terms is one of inclusion and not of limitation. The definition in Section 7 is not an "interchangeable equivalent" for the word "person"; the use of the word "includes" indicates that the definition merely specifies particular instances which fall within the general class. See *Helvering v. Morgan's, Inc.*, 293 U. S. 121, 125.¹⁶

section (R. 116-117). It seems unnecessary to add to the comment which Judge Clark made on this argument in his dissenting opinion. He said (R. 118):

"I do not believe our answer to the question here forecloses discussion of that other question whether the United States is itself subject to suit under Section 7 for possible violations of the Sherman Act. There is no necessary rule of mutuality; Congress could confer the right to sue upon the United States and deny sovereign liability. For my part I am willing to listen to argument upon the latter question if and when it becomes an actual issue. Now I content myself with saying that I am satisfied that the United States may sue under Section 7, and therefore I would reverse the decision below."

¹⁶ The form of Section 7 shows that in fact the draftsman did not regard the definition in Section 8 as an interchangeable equivalent. Section 7 gives the remedy to "any person"

Section 8 was doubtless added out of an abundance of caution and for the purpose of making it clear that the act applied to corporations.¹⁷ It adds nothing to the significance which Section 7 would possess if it stood alone. If this Court is to accept respondents' argument on this point, it must construe a section of the statute which is designed only to expand the class of persons subject to the penal provisions of the statute as limiting the plain meaning of a prior section which is remedial in character. Words intended to expand the scope of the statute thus become words of crippling limitation. This result is hardly consistent with the apparent intent of Congress.

Even if it is assumed that Section 3 was intended to cut down the scope of the word "person" in Sec-

"who shall be injured "by any other person or corporation." The use of the word "corporation" in the one place and not in the other indicates that the draftsman did not think of the definition in Section 8 as applying automatically whenever the word "person" was used. The form of the section also shows that the draftsman was not using the words "person" and "corporation" with the high degree of precision which respondents' argument assumes.

¹⁷ One commentator has suggested that Section 8 was added so that there could be no doubt that a corporation was subject to a fine under the act. See *Claim of United States for Treble Damages under the Sherman Act* (1940), 35 Ill. L. Rev. 223-224, fn. 10. The commentator concludes:

"Section Eight does not serve, either by its terms or in its purpose, to limit the definition of 'person' to those agencies specifically mentioned in that Section; but rather to expand that term so as definitely to include corporations within its meaning in a statute that provides both a fine and a prison sentence."

tion 7, it is by no means certain that the omission of reference to the United States is of assistance to respondents. Congress was certainly familiar with the historic canon of construction that the state takes the benefits of a statute even though not expressly named. See page 19, *supra*. Had Congress intended to exclude the United States from the scope of Section 7, certainly, in deference to this historic rule, it would have done so expressly and without ambiguity. Elsewhere in the antitrust laws Congress has indicated its belief that the United States falls within the scope of the broad words "any person, firm, corporation, or association." Section 16 of the Clayton Act (38 Stat. 737, 15 U. S. C., Sec. 26) provides that "any person, firm, corporation, or association" may sue for injunctive relief against loss or damage threatened by a violation of the antitrust laws and then adds the following proviso:

That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce * * *.

In addition, if it is assumed that Section 8 is designed to limit the language of Section 7, it then becomes necessary to give Section 8 a reasonable interpretation which will not so narrow the scope of Section 7 as to impair the effective opera-

tion of the act. It is appropriate, therefore, to consider whether there is any reasonable interpretation of Section 8 which would permit the United States to maintain a suit for triple damages under Section 7. An interpretation is possible which achieves this result without doing violence either to the language of Section 8 or to the decisions of this Court. For the purposes of Section 8 the United States can properly be regarded as a corporation existing under or authorized by laws of the United States. The corporate character of the United States is well established: *Dixon v. United States*, 1 Brock 177, 7 Fed. Cas. 761 (Cir. Ct. Va. 1811); *Helvering v. Stockholms &c. Bank*, 293 U. S. 84, 91-92; *Stanley v. Schwalby*, 147 U. S. 508, 517; *United States v. State Bank*, 96 U. S. 30, 36; *United States v. Maurice*, 2 Brock 96, 26 Fed. Cas. 1211; *Cotton v. United States*, 11 How. 228, 231; *Van Brocklin v. Tennessee*, 117 U. S. 151; *United States v. Hill*, 60 Fed. 1005 (C. C. A. 6th); *Denver & R. G. R. Co. v. United States*, 241 Fed. 614 (C. C. A. 8th). Cf. *United States v. Perkins*, 163 U. S. 625, 631.

The court below took the view that even though the United States is a corporation or association it does not exist under or is not authorized by the laws of the United States (R. 116). But nothing in Section 8 or in the decisions of this Court requires this conclusion. If it were necessary to match technicalities with the opinion below, it would be enough to point out that in Article VI,

the Constitution, under which the United States was created, describes the Constitution itself as "the supreme law of the land." See *McCulloch v. Maryland*, 4 Wheat. 316, 406; *Ex Parte Siebold*, 100 U. S. 371, 392. The United States is itself, therefore, a corporation created under or authorized by the laws of the United States.

But, more broadly, the decision below reading into Section 8 a distinction between the United States and other corporations, introduces an artificial refinement into the section which defeats its purpose. The definition was obviously drawn to include all corporations and associations; for example, it covers not only corporations and associations existing under the laws of the United States but those existing under state and territorial laws as well, and even those existing under the laws of a foreign country. This broad purpose is not accomplished by hypertechnical distinctions between one kind of corporation or association and another. See *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 392. The definition admittedly covers a corporation organized under an act of Congress. The Tennessee Valley Authority, the Reconstruction Finance Corporation, the Smithsonian Institution, and any other federal corporation is clearly entitled to the remedy provided by Section 8. If the Procurement Division of the Treasury Department, which purchased the tires involved in the instant case, had been incorporated, its right to sue under Section

7 would be admitted. To paraphrase the words of this Court in *Inland Waterways Corp. v. Young*, 309 U. S. 517, 523, the motives which may lead the Government to clothe its activities in corporate form are entirely unrelated to the problem of obtaining compensation for financial damage inflicted by an illegal conspiracy. The power of the United States to recover damages under Section 7, therefore, should not depend upon the fortuitous circumstance of purchases being made by a Government corporation rather than by an unincorporated arm of the Government.

Respondents argued below that the remedies conferred upon the United States are to be found in the sections of the statute which provide for criminal proceedings and suits for injunctions to restrain future violations, that these remedies are exclusive, and that their existence indicates that no additional remedy was intended to be conferred by Section 7. This argument ignores the salient characteristic of the statutory scheme. As we have pointed out, Congress obviously intended that three different remedies—the indictment, the injunction, and the suit for damages—should be available against persons who engage in illegal combinations and conspiracies and that these remedies might be prosecuted concurrently (see pp. 20–22, *supra*). The remedies of indictment, injunction, and forfeiture were given to the United States in its governmental or sovereign capacity as the law-enforcing agency; they do not serve to protect the finan-

cial or proprietary interests of the United States as a purchaser of goods or to compensate it for damages suffered as a result of an illegal conspiracy. An argument that the proprietary interests of the United States are left without protection cannot be answered by pointing to remedies designed solely to vindicate its sovereign political power. Cf. *Cotton v. United States*, 11 How. 228 231.

III

THE CONCLUSION THAT THE UNITED STATES HAS NO REMEDY UNDER SECTION 7 CANNOT BE SUPPORTED BY LEGISLATIVE HISTORY, THE DECISIONS RELIED UPON BY RESPONDENTS, OR ADMINISTRATIVE PRACTICE

1. *Legislative History*.—Even if it be assumed, and this we do not concede, that the meaning of Section 7 is so doubtful or obscure that a resort to legislative history is proper, that history lends no support to respondents' argument.¹⁸ In the court below the respondents sought to support their position by inferences drawn from statements made in congressional debates. Those statements were not directed to the precise problem now before the Court. In most cases they do not relate to Section 7 as it now exists. Many of them were made when the statute under consideration contained provisions so different from the provisions which

¹⁸ Although in the court below the respondents argued that the legislative history supported their view, it should be noted that the majority of the Circuit Court of Appeals did not purport to rely upon that history in reaching a decision.

were finally enacted into law that they have no significance to the present issue. Because of the circumstances in which the statements were made, their meaning in most cases is highly ambiguous. In some instances they appear to support the position of the respondents; in others they appear to support the position taken by the United States. The appendix to this brief sets forth all of the colloquies which appear to have any bearing whatsoever upon the present issue and describes the circumstances in which they occurred.¹⁹ This appendix shows that the congressional debates for the most part obscure rather than illuminate the problem.²⁰ The effect of the arguments in this case as to legislative history may well be described in words used by this Court in *Federal Communications Comm'n v. Columbia Broadcasting System*,

¹⁹ See pages 50-80, *infra*.

²⁰ The words of this Court in *United States v. Freight Ass'n*, 166 U. S. 290, are also appropriate. The Court said with respect to the legislative history of the Sherman Act (p. 318):

"Looking simply at the history of the bill from the time it was introduced in the Senate until it was finally passed, it would be impossible to say what were the views of a majority of the members of each house in relation to the meaning of the act. It cannot be said that a majority of both houses did not agree with Senator Hoar in his views as to the construction to be given to the act as it passed the Senate. All that can be determined from the debates and reports is that various members had various views, and we are left to determine the meaning of this act, as we determine the meaning of other acts, from the language used therein."

No. 39, this term, decided November 25, 1940. The Court said (p. 3):

What thus appears clear from a reading of the Communications Act itself is not modified by the collateral materials which have been pressed upon us. That both sides invoke the same extrinsic aids, one to fortify and the other to nullify the conclusion we have reached, in itself proves what dubious light they shed. What was said in Committee Reports and some remarks by the proponent of the measure in the Senate are sufficiently ambiguous, insofar as this narrow issue is concerned, to invite mutually destructive dialectic but not strong enough either to strengthen or weaken the force of what Congress has enacted.

Compare *United States v. Stewart*, No. 50, decided November 12, 1940, and *Gorin v. United States*, No. 87, decided January 13, 1941.

In the debates which preceded the passage of the Clayton Act in 1914 one statement was made on the floor of the Senate which requires comment. The statement was made by Senator Culberson, then Chairman of the Judiciary Committee of the Senate, in connection with a proposed amendment of the provisions now contained in Section 5 of the Clayton Act.²¹ The section under consideration

²¹ Section 5 provides:

"A final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the

provided that a judgment or decree rendered "in any suit or proceeding in equity" brought by the United States should be prima facie evidence in any other proceeding under the antitrust laws. It was proposed on the floor of the Senate to amend this provision so that a decree or judgment entered in an action at common law, a criminal prosecution, or a suit in equity brought by the United States should be prima facie evidence. This amendment was not adopted and the provision was finally adopted in the form in which it now appears in Section 5 of the Clayton Act. In opposing the proposed amendment Senator Culberson said (51 Cong. Rec. 13898, 63rd Cong., 2d Sess.):

There is no suit authorized by any of these statutes by the United States except a criminal prosecution or a suit in equity. The United States does not bring a suit at law for damages.

It can hardly be denied that this statement is inconsistent with the position taken by the United States in this case. It should be pointed out, however, that in the circumstances the statement can hardly represent a discriminating analysis or criticism of the issue here involved; that it was

antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: * * *"

made by the Senator with reference to a somewhat different problem; and that, at best, it represents the unconsidered opinion of one member of one house of Congress. Standing alone, the statement is not a sufficient basis for a construction of the statute which disregards the plain meaning of the words of Section 7, impairs to a large measure the purpose of the statute, and denies to the United States a remedy which is given to every other person.

That all of the members of Congress were not in agreement with Senator Culberson when the Clayton Act was passed is indicated by a colloquy which took place on the floor of the House of Representatives.²² In the course of a discussion of the remedies available under the Act, Mr. Webb, who was Chairman of the Judiciary Committee of the House and in charge of the bill on the floor, pointed out that there were five civil remedies available under the Act (51 Cong. Rec. 16275). Later the following exchange of views took place (51 Cong. Rec. 16276):

Mr. RUSSELL. I understand the proceeding by injunction for relief of the parties damaged is not the only remedy.

Mr. WEBB. Oh, no; it is only one of five different remedies.

²² A detailed statement of this circumstance of this colloquy is found in the appendix, p. 76, *infra*.

Mr. RUSSELL. They have the right to sue for damages or for treble damages without any injunction proceeding at all.

Mr. WEBB. Certainly; the remedies are cumulative. The remedies pile up, and all of the remedies are open to the individual and to the Government in a suit.

2. *The decisions relied upon by respondents.*—Prior to the institution of this suit, no court had ever considered the precise issue which it raises. Consequently, the decisions cited by the respondents are not presented as *ad hoc* determinations of the question under consideration. Reliance is placed rather upon general language found in certain opinions which discuss the general plan of the Sherman Act. Examination of this language shows that in fact it gives no substantial support to respondents' arguments. In some cases the courts have pointed out that only the United States can initiate and prosecute criminal proceedings and that Section 7 is the only part of the Act which confers any remedy whatsoever upon private litigants.²³ In other cases the courts have described actions brought under Section 7 as "pri-

²³ Language of this kind is found in *Pidcock v. Harrington*, 64 Fed. 821 (C. C. S. D. N. Y.); *Greer, Mills & Co. v. Stoller*, 77 Fed. 1 (C. C. W. D. Mo.); *United States v. Patterson*, 201 Fed. 697 (S. D. Ohio, 1912), *reversed on other grounds*, 222 Fed. 559, *cert. denied*, 238 U. S. 635, cited by respondents and by the majority of the court below.

vate actions.”²⁴ These points are beyond controversy, but to accept them is not to accept the conclusion that the United States has no rights under Section 7. In some of the opinions relied upon by respondents it is said that the remedies provided by the Act are exclusive in the sense that no common law remedies remain.²⁵ That is doubtless true, but the question here is what remedies are conferred by the statute upon the United States. The fact that the United States has no other remedies does not narrow the scope of Section 7; it rather supports the view that the United States, like all other persons, is entitled to the remedies created by that section.

Respondents also relied below upon decisions construing other statutes. Necessarily these decisions carry little weight. They relate to statutes containing language different from that in the Sherman Act and intended to accomplish a different purpose. They fall short of establishing that as a matter of law the United States is not a juristic person or that it cannot take advantage of the benefits of the statute unless expressly named.

²⁴ See, for example, *General Inv. Co. v. Lake Shore Ry.*, 260 U. S. 261. In one sense even a suit brought by the United States under Section 7 may properly be described as a “private” suit. It is “private” in the sense that it is a suit to recover for damages inflicted upon the United States in its proprietary aspect rather than to vindicate its sovereignty. In other words, in such a suit the United States stands on the same footing as any private person.

²⁵ See, for example, *Wilder Mfg. Co. v. Corn Products Co.*, 236 U. S. 165.

In fact, the rule is otherwise (see pages 13-15, 19, *supra*).

The respondents' chief reliance is placed upon *Davis v. Pringle*, 1 F. (2d) 860 (C. C. A. 4th), *affirmed*, 268 U. S. 315. The question for decision there was whether the United States was entitled to a preference in bankruptcy under Section 64 (b) (5) of the Bankruptcy Act of 1898, which provided for priority in payment of "debts owing to any person who by the laws of the states or the United States is entitled to priority." This Court held that the United States was not entitled to the preference. The Court predicated its decision primarily upon the fact that elsewhere in the Bankruptcy Act a limited priority for taxes had been expressly given the United States and that since this preference was expressly created, it was a fair inference that it was the only preference Congress intended the United States to have. If in the instant case the Sherman Act, elsewhere than in Section 7, conferred upon the United States some limited right to recover compensation for the injuries which it has suffered, say a right to sue for simple damages, then the case would be analogous to the situation presented in *Davis v. Pringle*, 268 U. S. 315, and the decision there would be a persuasive authority. But here the only section of the Act which purports to confer any right to recover damages is Section 7. Accordingly, that section cannot be limited by reference to remedies con-

ferred elsewhere in the Act. This is particularly true because, as we have pointed out, the criminal and equitable remedies, directed to wholly different ends, are in no way substitutes for the remedy which the United States seeks here.

Furthermore, it is significant that in *Davis v. Pringle*, 268 U. S. 315, the United States sought a preferred position in the distribution of the assets of the insolvent estate. Here, on the other hand, what the Government seeks is right equal to, but no greater than, that conferred upon every other person. It should also be noted that in *Davis v. Pringle*, 268 U. S. 315, the Supreme Court found that the legislative history of the statute indicated clearly that Congress did not intend to give to the United States the particular priority claimed. No showing of this kind can be made with respect to the intent of Congress in enacting Section 7 of the Sherman Act.

The subsequent legislative history of the provision of the Bankruptcy Act construed in *Davis v. Pringle*, 268 U. S. 315, and the subsequent course of decisions in this Court create grave doubt as to whether that decision can be regarded as laying down any rule of general application. Whatever may have been true of its prior intent, Congress, immediately after the decision of the Supreme Court, amended Section 64 (b) of the Bankruptcy Act so as expressly to confer priority upon the United States (Act of May 27, 1926, c. 406, Sec. 15;

44 Stat. 666).²⁶ It should also be noted that in each of the three cases which subsequently presented the question this Court, looking at the general legislative purpose, held that the word "person" included a political entity. *Ohio v. Helvering*, 292 U. S. 360; *Helvering v. Stockholms &c. Bank*, 293 U. S. 84; *Nardone v. United States*, 302 U. S. 379.

Respondents also relied upon the decision in *United States v. Fox*, 94 U. S. 315. The only question presented there was whether under the laws of the State of New York the United States could take real estate by devise. The courts of New York held that the United States did not have the capacity to do so.^{26a} Under well-established rules the Supreme Court was bound by that construction of the state law. This decision, therefore, has no direct bearing on the construction of a federal statute. It does not even establish the proposition that under the law of the State of New York the word "person," standing alone in a statute, does not include within its scope a body politic. In *Republic of Honduras v. Soto*, 112 N. Y. 310, decided in 1889, the Court

²⁶ In the words of one district court, Congress immediately took steps "to undo the defining that was done by the Supreme Court in the case of *Davis v. Pringle* * * *." *In re C. D. Hauger Co.*, 54 F. (2d) 117 (D. C. Tex.). Cf. *Lincoln v. Ricketts*, 297 U. S. 373, 376-377.

^{26a} When this case was decided it had long been established in New York that only a corporation organized under the laws of New York could take real property by devise. *White v. Howard*, 46 N. Y. 144.

of Appeals of New York held that Section 3268 of the Code of Civil Procedure, which required the filing of security in any case in which the plaintiff was "a person residing without the State," applied to the Republic of Honduras. Accord: *Ohio ex rel Fulton v. Saal*, 239 App. Div. 420, *appeal dismissed on other grounds*, 264 N. Y. 465.

3. *Administrative Practice*.—Respondents have emphasized that this is the first time the United States has sought to maintain a suit for triple damages under Section 7 and that this failure to act amounts to an administrative interpretation of the law which is now entitled to great weight. Respondents have also suggested that the reenactment of Section 7 in Section 4 of the Clayton Act is a kind of legislative ratification of this administrative interpretation. The Attorney General has never, formally or informally, expressed the view that the United States cannot maintain a suit under Section 7.²⁷ The bare fail-

²⁷ The appellants have cited one statement made by the Attorney General in 1926 which they assert is an admission that the United States has no rights under Section 7. An examination of the statement in the light of the circumstances in which it was made shows that it does not bear this meaning. The statement was made in response to a Senate resolution which asked the Attorney General to send to the Senate certain information with respect to cases instituted under the first seven sections of the Sherman Antitrust Law. In his reply the Attorney General said (Sen. Doc. No. 79, 69th Cong., 1st sess., p. 1):

"I inclose herewith a tabulated statement containing the information requested by the Senate as regards cases in

ure to exercise the rights conferred by Section 7 is not an administrative ruling or interpretation which is entitled to any weight whatsoever. *Union Stock Yard Co. v. United States*, 308 U. S. 213, 224; *Louisville & N. R. Co. v. United States*, 282 U. S. 740, 757, 759; *Kansas City So. Ry. Co. v. United States*, 252 U. S. 147, 151. Because there has been no administrative interpretation of the section, respondents' argument with respect to the reenactment of the section in the Clayton Act is without importance.

To reinforce their arguments with respect to administrative interpretation, respondents have also referred to certain comments made by students of the antitrust laws and to the report made by the Commissioner of Corporations in 1915.

which the United States has been the plaintiff or prosecutor, under sections 1 to 6, inclusive, of the act. In reporting criminal cases, the word 'convicted' has been construed to cover persons pleading guilty as well as persons convicted by verdicts of juries.

"Under Section 7, which gives to private persons the right to sue for injuries arising under the act, a number of actions have been instituted. The United States, however, under the statute is not a party to suits under that section. It is not notified of their commencement or their progress and enters no appearance upon the records of the court. The files of this department do not contain full data concerning purely private suits of this type; and I am therefore unable to give the information requested by the last paragraph of the present resolution."

It seems apparent that all the Attorney General was saying here was that the United States was not a party to suits brought by private persons under Section 7 and hence was not in a position to furnish information as to those suits.

The text of the statements by commentators are set forth in a footnote.²⁸ They are not considered analyses of the problem and, indeed, it is hardly accurate to say that they even purport to relate to the precise issue now under consideration. In this connection it is significant that the weight of the comment contained in law journals with respect to the decision of the lower courts in this case has been adverse to respondents' position.²⁹

The report made in 1915 by the Commissioner of Corporations³⁰ divided judicial proceedings

²⁸ *The Sherman Act* (1917), 31 Harv. L. Rev. 412:

"* * * the Attorney General of the United States may invoke the application of the act by a bill in equity or indictment in the federal courts. The individual may also do so in a suit for triple damages under section 7 [p. 443]."

Procedure in Private Suits under the Sherman and Clayton Acts (1932), 32 Col. L. Rev. 335:

"A judgment of the efficacy of the antitrust laws should be based not alone upon the success of the government's suits, but also upon those brought under section 7 of the Sherman Act * * * [p. 335]."

Recovery of Treble Damages under the Sherman Act (1929), 38 Yale L. J. 503:

"* * * it appears proper at this time to review the decisions under section 7 of the Act * * *. The private right of action is provided as a supplement to the governmental enforcement of the Act [pp. 504-505]."

²⁹ *Claim of United States for Treble Damages under the Sherman Act*, 35 Ill. L. Rev. 223; *Right of the United States to Sue for Treble Damages*, 89 U. of Pa. L. Rev. 243-245; and compare *Is the United States Such a "person" as May Sue under Section 7 of the Sherman Act*, 26 Va. L. Rev. 958-959.

³⁰ Commissioner of Corporations' report to the President on Trust Laws and Unfair Competition (1915).

under the Sherman law into five broad classes: (1) Criminal prosecutions; (2) suits in equity by the Government; (3) condemnation proceedings by the Government with respect to goods transported in interstate commerce; (4) actions by private parties for treble damages; (5) actions at law or suits in equity between private parties where the law has been pleaded in defense, or where relief has been affirmatively sought from restraints imposed by agreements.

Whatever significance is to be attached to this classification, it can hardly be regarded as a deliberate judgment on the point at issue or as an adequate basis for a construction of Section 7 which deprives the United States of a remedy available to all other persons. It probably amounts to nothing more than recognition of the fact that the Government had never asserted its rights under Section 7.

Respondents rely also upon a statement made by Senator O'Mahoney on June 28, 1939, in support of a bill designed to permit the United States to collect civil penalties for violations of the Sherman Anti-Trust Act.³¹ Whatever the weight to

³¹ The Senator said (Cong. Rec., Vol 84, p. 8192):

"One of the principal reasons why the Anti-Trust Laws have not heretofore prevented combinations and mergers hostile to the public interest is that the penalties and remedies for violations as now provided are altogether inadequate. Jail sentences are seldom imposed, because the public does not place an economic offense in the same category with an ordinary criminal offense involving moral turpitude.

be accorded a Congressional statement as to the interpretation of a statute passed long before, the Senator's remarks do not necessarily carry the weight respondents place on them.

It seems unlikely that Senator O'Mahoney intended to refer to the present issue. The text of his remarks indicates clearly that he was considering the general deterrent effect of the statute and that when he spoke of remedies he was thinking of situations where the law had been violated but where the proprietary interests of the United States had not been injured. His failure to refer to the action for damages as a remedy of the United States which was "worth mentioning" is probably only another reflection of the fact that for many years the Government had not asserted its rights under Section 7.

CONCLUSION

For these reasons, it is respectfully submitted that the decision of the court below should be reversed and the cause remanded with instructions

On the other hand, a \$5,000 fine is of no concern to the large corporation.

"There is only one other remedy worth mentioning available under existing law to the Department of Justice—the civil action for an injunction. In addition, there is the action in damages by a private person who has been injured. Neither of these remedies is effective."

that the motion to dismiss the complaint should be denied.

✓ FRANCIS BIDDLE,
Solicitor General.

✓ THURMAN ARNOLD,
Assistant Attorney General.

✓ HUGH B. COX,
Special Assistant to the Attorney General.

ROBERT C. BARNARD,
Special Attorney.

JANUARY 1941.

APPENDIX

THE LEGISLATIVE HISTORY OF THE ANTITRUST LAWS

I. THE PASSAGE OF THE SHERMAN ACT

A draft of a proposed antitrust act was first introduced by Senator Sherman of Ohio in the First Session of the 51st Congress on December 4, 1889 (Cong. Rec., Vol. 21, p. 96). The bill was referred to the Committee on Finance, headed by Senator Sherman, from which a second draft of the bill containing minor amendments was reported by that Senator on January 14, 1890 (Cong. Rec., Vol. 21, p. 541). A third bill, a substitute bill, was reported by Senator Sherman from the Committee on Finance on March 18, 1890 (Cong. Rec., Vol. 21, p. 2329).

Section 1 of the first draft introduced by Senator Sherman provided that "all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view or which tend to prevent full and free competition * * * or which tend to advance the cost to the consumer of any * * * article" are "against public policy, unlawful, and void." (Cong. Rec., Vol. 21, p. 1765.)

Section 2 of the bill introduced by Senator Sherman gave "any person or corporation" who had paid an enhanced price for goods by reason of the existence of a combination in restraint of trade, the right to sue for and recover "the full consideration or sum paid by him" for such goods. Section 3 of

the draft imposed criminal penalties enforceable by the district attorneys of the United States against persons entering into any combination of the character forbidden by the Act (Cong. Rec., Vol. 21, p. 1765).

The second draft of the bill reported by Senator Sherman from the Committee on Finance was substantially identical to the first draft except that Section 2 was modified to provide that "any person or corporation" injured by a combination of the character forbidden by the Act could sue and recover "twice the amount of the damages sustained, and the costs of the suit" (Cong. Rec., Vol. 21, p. 2599).

Senator Sherman's third bill reported from the Committee on Finance on March 18, 1890, provided (Cong. Rec., Vol. 21, p. 2455):

That all arrangements, contracts, agreements, trusts, or combinations between two or more citizens or corporations, or both, of different States, or between two or more citizens or corporations, or both, of the United States and foreign states, or citizens or corporations thereof, made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into the United States; or with a view or which tend to prevent full and free competition in articles of growth, production, or manufacture of any State or Territory of the United States with similar articles of the growth, production, or manufacture of any other State or Territory, or in the transportation or sale of like articles the production of any State or Territory of the United States into or within any other State or Territory of the United States; and all arrangements, trusts, or com-

binations between such citizens or corporations, made with a view or which tend to advance the cost to the consumer of any such articles, are hereby declared to be against public policy, unlawful, and void. And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, and to issue, all remedial process, orders, or writs proper and necessary to enforce its provisions. And the Attorney-General and the several district attorneys are hereby directed, in the name of the United States to commence and prosecute all such cases to final judgment and execution.

Sec. 2. That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination defined in the first section of this act may sue for and recover, in any court of the United States of competent jurisdiction, without respect to the amount involved, of any person or corporation a party to a combination described in the first section of this act, twice the amount of damages sustained and the cost of the suit, together with a reasonable attorney's fee.

The respondents in the court below relied upon a colloquy between Senator Sherman and Senator Hoar as to the proper interpretation of Senator Sherman's third draft. When that passage is read in full it is apparent that it is not subject to the interpretation which appellees place on certain portions torn from their context. The colloquy was occasioned by Senator Hoar's suggestion that Section 1 of the bill would require the United States to prosecute suits for damages on behalf of

private individuals. Senator Sherman did not agree, pointing out that the remedies in Section 1 were different from those in Section 2. At the same time, Senator Sherman indicated that under his proposal the United States could bring a civil action for damages, but in fairness it must be said that the Senator was apparently referring to Section 1 and at no time considered the question of whether the United States could bring suit under Section 2.¹ The colloquy was as follows (Cong. Rec., Vol. 21, pp. 2563-2564):

Mr. HOAR. I wish to ask the Senator from Ohio one or two practical questions about the details of the bill, which will take but a moment. The bill provides that—

“The circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity.”

I suppose it is the purpose of the Senator from Ohio to give private citizens who are injured by these combinations or monopolies for the advancement of cost or preventing men from freely competing, a civil remedy in the courts, is it not?

Mr. SHERMAN. Certainly.

Mr. HOAR. I suppose that is the object, and I suppose any citizen of the United States might bring a suit in the courts if he had been wronged or claimed that he had been wronged in this way. Now the bill goes on and says:

“And the Attorney-General and the several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution.”

¹ See pp. 57-78, *infra*.

Mr. SHERMAN. That is confined to the first section of the bill.

Mr. HOAR. I understand that, and my question is confined to the first section of the bill.

Mr. SHERMAN. The first section of the bill does not give a civil remedy at all; it is the second section that gives a civil remedy.

Mr. HOAR. The first section says that—

“The circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section.”

Now the Senator says the first section does not give the civil suit at all.

Mr. SHERMAN. It does give a suit in the name of the United States:

“And the Attorney General and the Several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution.”

Mr. HOAR. Then the Senator avoids my first question and does not mean to answer it.

Mr. SHERMAN. I do.

Mr. HOAR. Let me put the question again. The first section of the bill declares:

“The circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, and to issue all remedial process, orders, or writs proper and necessary to enforce its provisions.”

Now, this section has declared that all these arrangements are wrongful and unlawful, and that is the only declaration which gives any private citizen any right

to sue under them. That is the declaration of the first section. It seems to me that as the Senator has got this bill so drawn that any citizen of the United States can invoke the civil remedy and the civil jurisdiction provided in the first section under the bill—it seems to me there is no doubt of it whatever—and when he has done it the bill makes it the duty of a United States officer, the Attorney-General or the district attorney, not merely to commence and prosecute the suit, but to prosecute it without compromise or abandonment, because he is expressly commanded to prosecute it “to final judgment and execution.”

Mr. SHERMAN. Well, Mr. President, the Senator has confounded the two sections together. They are absolutely distinct and independent, each conveying the proper authority and jurisdiction to the courts of the United States. The first deals only with combinations made in restraint of trade or to prevent free competition in the importation, transportation, etc., of articles. They are in the nature of public offenses against public policy. In regard to those in the first section it is declared that—

“The Attorney-General and the several district attorneys are hereby directed in the name of the United States to commence and prosecute all such cases to final judgment and execution.”

And before that it is provided—

“The circuit court of the United States shall have original jurisdiction of all suits of a civil nature.”

Mr. HOAR. Are they of a civil nature? The Senator has just said that these are public offenses and the statute says that they are suits of a civil nature.

Mr. SHERMAN. Cannot the United States commence a suit of a civil nature?

Mr. HOAR. For a crime?

Mr. SHERMAN. Not for a crime, but for a remedial proceeding. It is a proceeding, such as is known in every State of the Union, as in the Commonwealth of Massachusetts and in other States. There are suits by the people of New York against these combinations. We have a suit of the people of Ohio and the people of Missouri; I quoted here a decision in a suit of the people of Illinois—just such things as are contemplated by this bill. If the Senator from Massachusetts will read the second section of the bill he will find that that alone deals with private suits.

“Section 2. That any person or corporation injured or damnified by such arrangement, contract, agreement, trust, or combination defined in the first section of this act may sue for and recover, in any court of the United States of competent jurisdiction, without respect to the amount involved, of any person or corporation a party to a combination described in the first section of this act, twice the amount of damages sustained and the costs of the suit, together with a reasonable attorney's fee.”

It is the second section that gives the civil suit, and that is not to be prosecuted at all by the United States or by the officers of the United States. The first section deals with the public injury to the people of the United States and there the suit is brought in the name of the United States to restrain, limit, and control such arrangements so far as they are illegal. The second section gives a private remedy to every person injured.

It seems to me the two sections are as distinct from each other as possible.

Mr. HOAR. The Senator from Ohio states, in my very humble judgment, two entirely different and conflicting and inconsistent propositions. I agree and thoroughly understand that the second section of the bill gives individuals the right to private suits. I leave that out as settled. I am looking at the first section alone. The Senator says that the first section provides nothing but suits for public offenses, which are criminal suits and to be tried in the name of the United States, as for an offense against the United States. The language of the section is:

"And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section."

I should like to ask the Senator again, does he understand that the United States is to enforce this proposed statute by a civil suit, and not by a criminal proceeding?

Mr. SHERMAN. I say that in a civil suit brought in the name of the United States the United States may sue on a contract; they may sue for a neglect; they may sue for a great many things. These are civil suits. The distinction between a civil suit and a criminal suit, I need not tell the Senator from Massachusetts.

Mr. HOAR. I understand that. What will be the judgment?

Mr. SHERMAN. It may be a judgment of ouster of the corporation; *it may be a judgment for damages.*² Civil suits and criminal suits are easily distinguished.

Mr. HOAR. There is no difficulty in that.

² All italics are supplied.

Mr. SHERMAN. Very well. This is a civil proceeding commenced by the people of the United States against these corporations, and a judgment may be, as in ordinary cases, an ouster of the power of a corporation; *it may be for damages*; there may be an injunction; there may be proceedings in *quo warranto*, and so of the other ordinary civil proceedings which are fixed by the judiciary act of the United States.

But the second section provides purely a personal remedy, a civil suit also by citizens of the United States.

It is apparent that the foregoing passage deals solely with the question of whether the United States would be obligated to bring suits for the benefit of private individuals. Senator Sherman's statement to the effect that Section 2 gave individuals the right to maintain such suits which were "not to be prosecuted at all by the United States, or by the Officers of the United States" meant only that the United States was not to prosecute civil suits for damages on behalf of private litigants. At the same time Senator Sherman stated that the second section of his proposed bill gave "a private remedy to every person injured." It would seem that the word "person" was adopted as the broadest available generic term to describe the possible injured parties. Senator Hoar's statement that he agreed and thoroughly understood that the second section of Senator Sherman's proposed bill gave individuals the right to maintain private suits is no more than the reiteration of an obvious but not all-inclusive proposition. Senator Sherman's two references to suits by the United States for damages appear

to indicate that he believed that the United States could maintain such a suit under Section 1.

The respondents in the court below relied upon a subsequent statement by Senator Hoar wherein the Senator, commenting upon the inadequacy of Senator Sherman's bill by reason of its complete lack of penal provisions, stated (Cong. Rec., Vol. 21, p. 2567):

Mr. HOAR. In the next place, I want to come to the subject which was the matter of a colloquy between the honorable Senator from Ohio and myself when he was addressing the Senate in his own right, in his own time, and that is, that this bill fails to afford any considerable remedy to anybody, either to the public or to any private citizen, except so far as it may give a power to private citizens to bring their suits. It provides, in the first place, only for jurisdiction in the courts of the United States in suits of a civil nature to enforce the provisions of the bill. There is no remedy by penal suit; there is no remedy by indictment or by any other criminal process, if there be any other criminal process known.

The Senator says the suit of a civil nature gives, as against these corporations or partnerships, all the remedy which could exist for individuals when brought on the part of the United States. But what will it amount to? You cannot prove in any court that the United States will suffer damages, though you can say why, in a civil suit brought by the Attorney General or district attorney, the United States shall recover \$100,000, or \$200,000, or \$500,000. It is an injury to the public, but there is no injury to the

United States as a Government in respect of any of its property, or ownership, or function.

From the context of Senator Hoar's statement it is apparent that the Senator had in mind the ordinary case where the injury was to the public alone, and not "to the United States as a government in respect to any of its property, or ownership, or function." Clearly, the Senator was not thinking of the case where, as here, the United States is financially injured in its capacity as a purchaser of commodities.

Senator Hoar appears to have understood that the United States could sue for damages under the second section of Senator Sherman's substitute bill, which, as noted above, permitted suit for double damages by "any person or corporation injured or damnified" by any forbidden combination. Thus, in discussing a proposed amendment imposing a penalty for violation of an injunction, Senator Hoar stated (Cong. Rec., Vol. 21, p. 2641):

Now, that is a clear penalty and nothing but a penalty for an offense. It is a part of the civil remedy of the individual who suffers [in the discretion of the court the penalty was payable to the complaining party]; it is not the sum *which is to be recovered by the United States if it has suffered in any of its properties or functions which would make it a suitor for it to assert its own rights*, but it is a clear, sheer penalty. The contempt of court has been satisfied previously by the assumption of the amendment. *The injury to the United States or to anybody else in the way of*

property or business or any other material necessary is satisfied in another way.

* * *

In making this statement it is not clear whether Senator Hoar believed that Section 2 of Senator Sherman's bill gave "to the United States or to anybody else" a right to recover damages, or whether he believed that the remedy was conferred on United States by Section 1 and on other persons by Section 2. Whichever of these views he held, it is a fair inference that he believed that in one way or another the bill conferred upon the United States the right to sue for damages.³

Senator Sherman's bill, after much debate and many amendments, was referred on April 2, 1890, to the Judiciary Committee of the Senate, of which Senator Sherman was not a member. In the Judiciary Committee, of which Senator Hoar was a member, a new Bill was prepared. In the new Bill presented to the Senate by the Judiciary Committee the civil remedy for damages, formerly Section 2, was embodied in Section 7 of the bill. The debate on Section 7 was confined largely to a proposed amendment which would have given the

³ Senator Hoar apparently understood the words "any person or corporation" as used in Section 2 of the bill to be synonymous with the words "any purchaser." This is indicated by the fact that in the preceding Congress when the Senate was considering an earlier antitrust bill introduced by Senator Sherman, Senator Hoar offered an amendment which provided "* * * if any purchaser of articles specified in the preceding section shall be put to additional cost by the advancing of the price of such articles * * * he may * * * sue for and recover the damages sustained * * *" (Cong. Rec., Vol. 20, p. 1167).

state courts jurisdiction of suits under Section 7. There were no subsequent statements in debate which appear to relate directly to the present issue. Section 8 was not a subject of debate in either the Senate or the House. Section 7 was quoted but not discussed and Section 8 was not referred to in the report of the Judiciary Committee of the House (H. Rept. 1707, 51st Cong., 1st Sess.).

It will be recalled that Senator Sherman's earlier proposal was that "any person or corporation injured or indemnified" by a combination violating the Act could sue and recover double damages. The bill which was enacted provided in Section 7 that "any person who shall be injured in his business or property" by reason of a violation of the act could sue and recover triple damages.

It thus appears that the phraseology used in drafting Section 7 was substantially identical to that previously used in Senator Sherman's bill which was referred to on the floor of Congress by Senator Hoar when he stated (Cong. Rec. Vol. 21, p. 2641) "the injury to the United States or to anybody else in the way of property or business or any other material necessity is satisfied in another way."

The bill presented to the Senate by the Judiciary Committee was subsequently adopted without amendment. It was approved by the House and became the so-called "Sherman Act." (Cong. Rec. Vol. 21, pp. 6208, 6312, 6922.)

II. THE PASSAGE OF THE WILSON TARIFF ACT

The antitrust provisions of the Wilson Tariff Act, Sections 73 to 77 (Act of Aug. 27, 1894, c.

349, 28 Stat. 509; 15 U. S. C. A. Secs. 8-11, 15 and note), were introduced by Senator Morgan July 3, 1894, as an amendment to the tariff bill (Cong. Rec., Vol. 26, p. 7117). Senator Morgan, explaining his amendment, stated that Section 7, the section which confers the right to recover triple damages, was copied exactly from Section 7 of the Sherman Act (Cong. Rec., Vol. 26, pp. 7117, 7119). The proposed amendments were the subject of very little debate and were adopted without amendment. No statements were made in the debate which appear to relate to the present issue.

III. THE PROPOSED LITTLEFIELD AMENDMENT TO THE SHERMAN ACT, H. R. 10539, 56TH CONGRESS, FIRST SESSION

The respondents below referred to Section 9 of a bill to amend the Sherman Act introduced by Representative Littlefield April 7, 1900 (H. Res. 10539). The purpose of the bill was to provide additional and more stringent remedies against the combinations condemned in the Sherman Act. Only minor, nonsubstantive changes in the Sherman Act were proposed. Section 13 of the proposed act (H. Rept. 1506, 56th Cong., 1st Sess. p. 5) authorized private persons to bring any action which the United States could bring. Section 9, a part of which respondents have quoted, authorized individuals as well as the United States to bring an action to enjoin illegal combinations from carrying on interstate commerce. It also forbade the use of the mails by the defendants and their officers in furtherance of their illegal purpose and provided that their products should be forbidden interstate transportation.

It appears from the committee reports (H. Rept. 1506, 56th Cong., 1st Sess.) and the debates on

the proposed amendment that Congress intended to extend the remedies available to private persons not to limit or define actions by the Federal Government. None of the discussion on the amendment concerned the question whether the United States could bring an action under Section 7 of the Sherman Act. Section 9 provided (Cong. Rec., Vol. 33, p. 6491):

That every corporation, association, joint stock company or partnership doing business in any State of the United States, or in any Territory belonging thereto, or in the District of Columbia, producing, manufacturing, or dealing in any article of commerce, when organized, formed, managed, or carrying on business for the purpose of controlling or monopolizing the manufacture, production, or sale of any such article of commerce, or for the purpose of increasing or decreasing the cost of such article of commerce to the user or consumer thereof for the purpose of preventing competition in the manufacture, production, or sale thereof, is, for the purposes of this act, hereby declared to be illegal, and may be proceeded against at the suit of any person or persons or corporation or association, or by and in behalf of the United States, and perpetually enjoined and restrained from doing or carrying on any interstate or foreign commerce whatever, either with the States or the Territories of the United States or the District of Columbia, or any foreign country, and, if adjudged illegal within the meaning of this act, it and its officers and the members of such association, joint stock company, or partnership shall be, and hereby are, forbidden and prohibited the use of the mails of the United

States in aid or furtherance of any such business or purposes; and no article of commerce produced, or manufactured, or owned and dealt in by any such corporation, association, joint stock company, or partnership so organized, formed, managed, or carrying on business shall be transported or carried without the State or Territory in which produced or manufactured, or in which same may be, or without the District of Columbia, if produced, manufactured, or found therein by any individual, corporation, or common carrier in any manner whatever. All such articles of commerce shipped in violation of the provisions of this act shall be forfeited to the United States, and may be seized by any marshal or deputy marshal of the United States, or by any person duly authorized by law to make such seizure, and when so seized shall be condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law: *Provided, however,* That such articles of commerce may be so carried or transported for the use of the consignor or consignee.

IV. THE PASSAGE OF THE CLAYTON ACT

Section 7 of the Sherman Act was substantially reenacted as section 4 of the Clayton Act, which provides:

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and

shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. [Oct. 15, 1914, c. 323, § 4, 38 Stat. 731; 15 U. S. C. 15.]

The report of the Judiciary Committee of the House on section 4 (section 5 of the bill introduced by Representative Clayton) stated that section 4 was "supplementary to the existing laws" (H. Rept. 627, 63rd Cong., 2nd Session, p. 14). The Judiciary Committee of the Senate stated that it was not proposed by the Clayton bill "to alter, amend or change in any respect the original Sherman Antitrust Act." (S. Rept. 698, 63rd Cong., 2nd Session, p. 1.)

Section 1 of the Clayton Act embodies the definition contained in section 8 of the Sherman Act in the following words: *

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. [Oct. 15, 1914, c. 323, § 1, 38 Stat. 730; 15 U. S. C. 12.]

Referring to this section the Committee of the House stated (p. 7):

Section 1 of the bill defines technically for the purposes of this bill certain words, phrases, and terms used in the body of the bill. The definitions thus given are de-

* Representative Webb, Chairman of the Judiciary Committee, stated that the definition of the word "person" contained in section 1 "follows the words of the Sherman Law" (Cong. Rec., Vol. 51, p. 9414).

signed merely for convenient reference and to avoid repetition.⁵

Section 4 of the proposed bill was the subject of very little discussion in either the House or the Senate. On the floor of both houses it was stated that the remedy conferred by section 4 was merely a reenactment of that given by section 7 of the Sherman Act (Cong. Rec., Vol. 51, pp. 9164, 16319 (Representative Floyd), 9595 (Representative Green), 14214 (Senator Shields), 15938 (Senator Nelson)) and the section was generally approved. In the very meager debates on this section, the question whether United States could bring an action for damages under section 7 of the Sherman Act or section 4 of the Clayton Act was not raised.

In the course of the very extensive debates on other sections of the bill, however, remarks were made which appear to have some bearing on the question. These remarks are discussed below.

Respondents have referred to an isolated remark made by Senator Culberson, Chairman of the Judiciary Committee, during a debate on an amendment offered to the committee substituted for section 6 of the House Bill. Section 6, as reported by the judiciary committee, provided that any final judgment or decree that defendants' activity constituted a violation of the antitrust laws in any suit or proceeding in equity brought by the United States should be prima facie evidence against the defendant in any action brought by a private indi-

⁵ The Senate report stated that this section "is one confined exclusively to the definitions of terms employed in the bill * * *" (p. 42).

vidual.⁶ The discussion in which Senator Culberson's remark occurs is as follows (Cong. Rec., Vol. 51, pp. 13897-8):

The VICE PRESIDENT. The question is on the amendment reported by the committee, on page 6, line 12, as amended.

Mr. BRYAN. Mr. President, on page 6, I move to strike out the words "in equity," in line 13, so that a final judgment or decree may be used as evidence regardless of whether or not the suit was in equity. I see no reason why a distinction should be made between a common-law suit, a criminal prosecution, and a suit in equity in the use of the record.

The VICE PRESIDENT. The question is on the amendment to the amendment proposed by the Senator from Florida.

Mr. CULBERSON. Mr. President, I suggest to the Senator from Florida that it would be better, and make it clearer, if, after the language in line 12, instead of striking out the words "in equity" there were inserted the words "in any criminal prosecution or."

Mr. BRYAN. That is perfectly satisfactory, Mr. President; it accomplishes the same purpose, I think. If my amendment to the amendment should prevail, it would read:

"That a final judgment or decree heretofore or hereafter rendered in any suit or proceeding."

Certainly a criminal prosecution is a suit; and the language then would cover all classes of suits, whether they be criminal prosecutions or common-law suits or suits in equity, by simply striking out the words "in

⁶ Section 6 of the bill was subsequently enacted as section 5 of the Act quoted, *supra*, pp. 36-37).

equity." I have no objection, however, if the Senator prefers his amendment.

Mr. CULBERSON. We do not ordinarily refer to a criminal prosecution as a suit, I think.

Mr. BORAH. We would not refer to a criminal prosecution as a suit.

Mr. BRYAN. I have always heard it so referred to. I never heard it questioned that it was a suit.

Mr. BORAH. Oh, well, it is not a suit in the sense in which we use that term in referring to a suit in equity.

Mr. BRYAN. However, I am not particular about the phraseology. I think it ought to be so that a record in a criminal suit or prosecution could be used in a subsequent proceeding with the same force and effect as if it had been a suit in equity.

Mr. REED. Mr. President, it occurs to me that the matter suggested by the Senator from Florida—though I am not sure that I am in accord with him—would be covered by inserting, in line 13, between the words "in" and "equity," the words "law or," so that it would read "proceeding in law or equity," and after the word "equity" by inserting "or in any prosecution."

Mr. BRYAN. Mr. President, that is practically the same language as suggested by the chairman of the committee. I understand his suggestion is, in line 12, after the word "rendered," to insert "in any criminal prosecution or," so that it would read:

"That a final judgment or decree heretofore or hereafter rendered in any criminal prosecution or in any suit or proceeding in equity."

I am not at all particular about the phraseology.

Mr. REED. Leave out the words "in equity," and let it read "any suit or proceeding." That would cover any kind of proceeding.

Mr. BRYAN. That was my motion.

Mr. CULBERSON. There is no suit authorized by any of these statutes by the United States except a criminal prosecution or a suit in equity. The United States does not bring a suit at law for damages.

Mr. BRYAN. It occurs to me, Mr. President, that if the words "in equity" were stricken out, so that it would read "rendered in any suit or proceeding brought by or on behalf of the United States under the antitrust laws," it would be as broad as the antitrust law itself; but I am not interested in the phraseology. So I accept the suggestion of the Senator from Texas, and adopt his language, and offer it, withdrawing my first amendment.

A considered analysis of the remedies which are available against a violator of the antitrust laws was made subsequently by Representative Webb, Chairman of the Judiciary Committee, during the debates on the Conference Committee report. Answering the charge that the bill as reported by the Conference Committee was without "teeth," Representative Webb enumerated five civil remedies, the first of which was an action for treble damages under section 4, which might be brought by an individual or the United States against any one violating section 2 or section 3 of the bill. Section 2 prohibits price discrimination between customers where the effect is substantially to lessen competition. Section 3 prohibits tying clauses in contracts. Representa-

tive Webb's speech in part is as follows (Cong. Rec., Vol. 51, pp. 16274-5):

Mr. WEBB. Now, gentlemen, as to the "teeth" that they say have been extracted from this bill, I tell you that there are more "teeth" in these two sections than anyone may imagine, and I am going to show you the "teeth." All through this bill we have provided civil remedies to stop the practices denounced in sections 2 and 3 of the conference report, and I for one was very, very insistent on keeping these two sections in the bill in order that these extraordinary remedies given to the individual might apply.

Now, here is the first "tooth" I will refer you to, and that is in section 4:

"That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

Now, let a businessman somewhere in the United States, or 40 or 50 of them, be damaged by the things that are denounced as unlawful in this section, and let them all bring suit. That is bigger, as my friend from Kentucky [Mr. Johnson] says, than a "harrow tooth," and will have a more deterrent effect on the men who practice those things than a mere criminal penalty, and we all know that the disinclination of juries in some quarters to convict men under these criminal sections has resulted in their acquit-

tal. For instance, take the case of the Beef Trust. The average man thought the Beef Trust was a criminal, but the jury in Chicago would not convict them. Now, the next thing is to give the individual who is harmed by these practices—not necessarily restraints of trade or monopolies, but things that lead up to restraints of trade and monopolies—the right to bring suit for any amount he pleases.

But it goes still further—

Mr. BARTLETT. That is the identical provision that the House adopted?

Mr. WEBB. Yes; that is the identical provision that the House adopted, and we kept it in the bill.

Mr. STAFFORD. Mr. Speaker, will the gentleman permit an interruption?

Mr. WEBB. Yes.

Mr. STAFFORD. Take the case of the shoe manufacturers of the country, where they suffer by reason of the monopoly of the United Shoe Machinery Co. Suppose a shoe manufacturer should go into court and bring suit against the United Shoe Machinery Co. Where would their damages be? They would not be able to prove any damages, because it was based on supposition.

Mr. WEBB. If a man has been damaged and it is not speculative, he can prove it in court.

Mr. STAFFORD. It is speculative entirely, and this will not give him any relief, because you are not punishing the concerns criminally for the offense.

Mr. WEBB. If the gentleman will go with me one step further, I will show him how he can stop it as an individual, and not depend upon the Government of the United States to do so. That is something new.

Section 6 of the House bill, which is section 5 of the conference report, provides, among other things, that—

“Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.”

Now, I call the attention of my friend from Wisconsin [Mr. STAFFORD] and the attention of the House to section 11, which is another “tooth,” as reported by the conferees. It reads as follows:

“That authority to enforce compliance with sections 2, 3, 7, and 8 of this act by the persons respectively subject thereto is hereby vested in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board, where applicable to banks, banking associations, and trust companies, and in the Federal Trade Commission where applicable to to all other character of commerce, to be exercised as follows.”

- Now, the value of these two sections is this: That they not only give the individual the right to sue for treble damages where he pleases, and we not only suspend the statute of limitations against an individual if a Government suit is brought against a trust, but we also require the Federal Trade Commission to stop these practices and take those guilty of such practices into court.

But that is not all. Some argue that

after the Trade Commission takes jurisdiction that excludes individuals from pursuing these other remedies. The bill further provides:

"No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the anti-trust acts."

So you have three or four distinct remedies, all of which may be invoked at the same time.

Now, section 12 provides—

"That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business: and all process in such cases may be served in the district of which it is an inhabitant or wherever it may be found."

I will say to my friend from Wisconsin that we are liberalizing the procedure in the courts in order to give the individual who is damaged the right to get his damages anywhere—anywhere you can catch the offender, as is suggested by a friend sitting near by. And that is not all. Section 15 provides—

"That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation

shall be enjoined or otherwise prohibited."

Mr. BATHRICK. Mr. Speaker, will the gentleman yield?

Mr. WEBB. Yes, sir.

Mr. BATHRICK. How does the gentleman construe those words "under the direction of the Attorney General"? Does that mean that a district attorney cannot act unless he receives direction from the Attorney General?

Mr. WEBB. Yes. That is the universal rule. The Attorney General, being the head of the Department of Justice of the United States, should be consulted before the bringing of one of these suits.

Mr. BARTLETT. That is the same language as in the Sherman law.

Mr. WEBB. Yes. That is the language in the Sherman law. It extends to the acts denounced in this particular bill, also. But if any district attorney in the United States feels that these sections are being violated, all he has to do is to ask the Attorney General for permission to institute suit, and begin proceedings immediately.

Mr. BATHRICK. If we have some Attorneys General such as we have had in the past, the directions will not be given.

Mr. WEBB. Yes; of course. But we must leave something to the Executive. We cannot do everything by legislation. We must leave something to the Department of Justice and the courts. But that is not the only remedy, I will say to my friend. I have narrated three or four. If the Attorney General should be negligent, the individual himself has a wide-open door to go into court and sue. And he cannot only do that, but listen to the language of section 16:

"Sec. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 2, 3—

These two sections which we are discussing now—

"7 and 8 of this act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue."

There are five different distinct civil remedies that are given to individuals, to the Department of Justice, and to the Trade Commission for the purpose of preventing and restraining the acts denounced in sections 2 and 4, which are sections 2 and 3 of the bill under consideration as it came from the conference.

Upon the conclusion of these remarks several members of the House asked Representative Webb questions concerning the remedies under the proposed bill and the effect of the proposed bill on the penal sections of the Sherman Act. During the debate which had focused on the remedies that may be brought under the antitrust laws, Representative Webb restated, as a general principle, that five civil remedies, including an action for treble damages, are available to an individual

and to the Government. The discussion in which this remark occurred is as follows (Cong. Rec., Vol. 51, pp. 16275-6):

Mr. WEBB. Exactly. That is a fair statement of it, and that is what led a great many Members of the House and Senate to the conclusion that those acts that did not violate the Sherman law should not be denounced as criminal acts in the first instance in a new law. If a number of small links in the chain finally result in violation of the Sherman law, then the person who constructs the chain becomes subject to the pains and penalties of the Sherman law. A person who only builds one link in the chain is denounced here. There are people, and honest people, who thought that we ought not to put a man in jail for making one link, but that we should forbid him from forging other links. The Sherman law takes care of restraints of trade and monopoly. This bill is intended to prevent those individual acts which, if multiplied and persisted in, may lead to a violation of the Sherman law.

Mr. GOULDEN. Will the gentleman yield?

Mr. WEBB. Yes.

Mr. GOULDEN. In the elimination of criminal prosecutions as proposed by the conference, does the gentleman think it will have the same moral effect on the man who is an offender under this law and that you propose to reach by this change?

Mr. WEBB. If I had to choose between the civil remedies provided in this bill and the criminal provisions, I would let the criminal penalties go and keep the civil remedies. Personally, I would like to have seen both kept in the bill.

Mr. GOULDEN. Is it not much simpler and more effective to prosecute for criminal offenses of this character?

Mr. WEBB. No; if a criminal offense, you have to bring one suit through the Department of Justice. Under the civil remedies any man throughout the United States, hundreds and thousands, can bring suit in the various jurisdictions, and thus the offender will begin to open his eyes because you are threatening to take money out of his pocket.

Mr. GOULDEN. And the gentleman does not think it would be more difficult to prosecute under the civil law as now proposed than under the criminal law as originally passed by the House?

Mr. WEBB. No; a preponderance of evidence suffices in a civil action. Guilt beyond a reasonable doubt must be shown in criminal actions.

Mr. RUSSELL. I understand the proceeding by injunction for relief of the parties damaged is not the only remedy.

Mr. WEBB. Oh, no; it is only one of five different remedies.

Mr. RUSSELL. They have the right to sue for damages or for treble damages without any injunction proceeding at all.

Mr. WEBB. *Certainly; the remedies are cumulative. The remedies pile up, and all of the remedies are open to the individual and to the Government in a suit.*

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No. 484.

UNITED STATES OF AMERICA,

Petitioner.

vs.

THE COOPER CORPORATION, *et al.*,

Defendants-Respondents.

**MEMORANDUM OF DEFENDANTS-RESPONDENTS
ON PETITION FOR CERTIORARI.**

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**MEMORANDUM OF DEFENDANTS-RESPONDENTS
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This memorandum is addressed to a petition by the Solicitor General, on behalf of the United States, for review on writ of certiorari of a decision by the United States Circuit Court of Appeals for the Second Circuit affirming a judgment of the United States District Court for the Southern District of New York.

The Decisions Below.

The decision of the Circuit Court of Appeals (R. 115-118), of which review is desired, is as yet unreported. The decision of the District Court (R. 102-108) is reported in 31 F. Supp. 848.

The Complaint.

The complaint herein was filed by the Government on February 20, 1939, setting forth certain allegations of fact—not here at issue—to the effect that through the submission of allegedly uniform bids on federal contracts a violation of the Sherman Anti-Trust Act had occurred to the injury of the Government. The complaint concluded with a demand for treble the damages allegedly inflicted by such violation (R. 1, 3 *et seq.*).

The Issue Raised.

This complaint raised a narrow question of statutory construction—which is distinct from and should not be colored by the unproven factual allegations of the complaint as reiterated at length in the Solicitor General's petition.

This question of statutory construction was whether Congress intended to and did give to the Government in the Sherman Act the right to punish the alleged anti-trust violation—not merely by fines, imprisonment, injunctions and forfeitures under Sections 1-6 of the Act—but in addition by punitive assessment under Section 7 of threefold the damages, if any, incurred. The Government had never before in the 50 years of the Act's existence even claimed this punitive right.

No question was raised of merely "making whole" the Government through common law suit for simple damages.

The Issue Decided.

This question of statutory construction raised by the complaint was presented on April 14, 1939, by motion, to the United States District Court for the Southern District of New York (R. 101). The Court held that the Sherman Act did not give to the Government the right to assess punitive treble damages and dismissed the complaint (R. 102-109). The United States Circuit Court of Appeals for the Second Circuit affirmed (R. 115-119).

The lower courts upheld the following analysis of the law as presented by defendants-respondents:

I. "*Person*" may sue "*Person*."

(a) The Sherman Act authorizes the Government to sue "every person" for fines, imprisonment, injunctions and forfeitures. Sections 1-6.

(b) The Sherman Act authorizes "any person" to sue "any person" for treble damages. Section 7.

(c) It is claimed by the Government that, in addition to the rights of suit authorized in Sections 1-6, the Government is entitled to the right of suit authorized in Section 7.

II. *Government is not a "Person."*

(a) The Government is not "any person" within the meaning of the Sherman Act.

(i) A "person" under Section 7 is one who not only sues but who also is sued. This does not mean a sovereign Government. See *Lopenstein v. Evans*, 69 Fed. 908 (C. C. D. S. C.)

(ii) A "person" under Sections 1-6 is one who is sued by the United States. Again, this does not mean a sovereign Government.

(iii) A "person" in normal usage means natural person. Section 8 by definition expands "person" beyond this normal meaning to include merely corporations organized under the "laws of the United States." Once again, this does not mean a sovereign Government, for the Government is organized under the Constitution as distinguished from the "laws of the United States." By "laws of the United States" is meant Acts of Congress. See *Railroad Co. v. Mississippi*, 102 U. S. 135, 141.

(b) The Government in fact is seldom considered to be a "person" within the meaning of any statute, *United States v. Fox*, 94 U. S. 315—being so considered only where the statutory language necessitates this construction. See *Ohio v. Helvering*, 292 U. S. 360, 370. The language of the Sherman Act, as above analyzed, clearly does not necessitate this construction.

(c) The Government through the Department of Justice has consistently declined to claim that it is a "person" within the meaning of the Sherman Act, during the 50 years of the Act's existence. See *e. g.* Sen. Doc. No. 79, 69th Cong. 1st Sess.

(d) The Government need not be a "person" within the meaning of the Sherman Act, to be protected from anti-trust violation. The Government, when presented with bids to which it reasonably objects, can always reject the bids and (1) negotiate contracts with other sources—as it is here alleged that the Government actually did—or (2) impose the drastic penalties of fines, imprisonment and forfeiture and thereby insure satisfactory bids, or (3) enjoin for all time any repetition of the acts objected to. Indeed, even assuming for the sake of argument that a need exists, it is for Congress

to overturn the 50 years of administrative construction contra the Government being a "person" under the Act. See *United States v. Farrar*, 281 U. S. 624, 634.

III. Government therefore may not sue.

(a) The Sherman Act, therefore, does not authorize the Government—which is not a "person" within the meaning of Section 7—to sue for treble damages.

(b) Congress intended this result, as is indicated by the interpretative statements of the Act's legislative sponsors. See 21 Cong. Rec. 2563-4, 2567, 2641.

(c) Congress having carefully stated in the Act that the Government is to exercise specified rights of suit—for fines, imprisonment, injunctions and forfeitures—the Government is not entitled to exercise additional rights of suit. Sovereign governments as well as individuals may only exercise a right of suit under the Sherman Act where the Act expressly grants to them such right. See *Minnesota v. Northern Securities Co.*, 194 U. S. 48.

(d) While the Government may possibly take advantage of rights under a statute where not named therein, it may not indiscriminately take advantage of rights under a statute that *does* name the Government—allocating some rights to the Government and some to persons. See *Davis v. Pringle*, 268 U. S. 315.

Conclusion.

The defendants-respondents respectfully submit that the District Court and the Circuit Court of Appeals have correctly held that the Government may not sue for punitive treble damages—in addition to other penal and remedial relief—under the Sherman Act.

The defendants-respondents further submit that where, as here, these courts have held in accord with 50 years of departmental practice, it is scarcely necessary for this Court to grant certiorari for review thereof.

The defendants-respondents, however, respectfully defer to the judgment of this Court as to the necessity or lack of necessity for a formal ruling upon the issue involved.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 484.

UNITED STATES OF AMERICA,

Petitioner,

v.

THE COOPER CORPORATION, *et al.*,

Defendants-Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR DEFENDANTS-RESPONDENTS.

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v.

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No. 484

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR DEFENDANTS-RESPONDENTS.

Introductory.

The United States District Court for the Southern District of New York entered judgment dismissing the complaint of the Government herein for failure to state a claim upon which relief can be granted. 31 F. Supp. 848 (R. 102-9).

The Circuit Court of Appeals for the Second Circuit (one judge dissenting) affirmed. 114 F. (2d) 413 (R. 115-9).

This Court granted a petition by the Government for a writ of certiorari—unopposed—which invoked the jurisdiction of this Court under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. 61 S. Ct. 141.

Statement.

The complaint of the Government herein dismissed sets forth certain allegations of fact, unproven and not here at issue, to the effect that a violation of the Sherman Anti-Trust Act has occurred.

The complaint concludes that by reason of such violation the United States possesses a right of suit under the Act.

The right of suit claimed for the United States in the complaint is not one of those rights of suit for fines, imprisonment, injunctions and forfeitures granted by the Sherman Act in express words to the United States. Instead it is a right of suit for treble damages granted by the Act in express words—not to the United States as in the case of the other rights of suit but instead—to persons. This right of suit admittedly has never before been claimed for the United States during the 50 years of the Act's existence.

Issue.

The sole issue presented is an issue of law, namely whether the United States possesses under the Sherman Act the right, never before asserted, of suit for treble damages.

Argument.

The Government by its novel complaint herein is inviting this Court—as it has unsuccessfully invited the District Court and the Circuit Court of Appeals—to undertake as a judicial function Congressional powers of legislation.

Bluntly to summarize its position, the Government believes that the United States needs the right of suit for treble damages nowhere granted to it by the Sherman Act. The Government therefore requests this Court, by this test case, to save Congress the amending of the Act by judicially engrafting thereon such right of suit.

Much of the argument advanced by the Government, in fact, is totally irrelevant to the legal issue of whether the United States does or does not possess under the Sherman Act the right of suit for treble damages. Instead it is directed towards establishing that the United States should be granted such right.

Of this irrelevant nature are the assertions of the Government that the United States in this particular case needs to recover damages illegally inflicted upon it—assertions premised upon the unproven allegations of the complaint herein. Such gratuitous assumption by the Government that there are no defenses to the charges made in the complaint may be ignored.

Likewise of this irrelevant nature are the declarations of the Government that the United States generally needs the right to sue for treble damages under the Sherman Act. With respect to these declarations of need the defendants-respondents submit that if the United States needs any general right to sue for damages under the Act it needs at most a right to sue for simple damages; no necessity exists for the United States to punish through threefold damages in addition to fines, imprisonment, injunctions and forfeitures. The defendants-respondents particularly deny that the United States needs the right to sue for treble damages in order to obtain desired prices on defense projects. The Government has in its possession weapons far more potent than treble damage suits to achieve that result—as e.g. its right to threaten and if need be to use the statu-

tory right of taking over the property of a vendor who refuses to sell at prices deemed by the Government to be reasonable. Section 9, Public Act 783, 76th Congress, approved September 16, 1940.

Incidentally, the defendants-respondents are unable to comment upon the Temporary National Economic Committee Monograph No. 19 on Government Purchasing, so copiously cited by the plaintiff, as copies of this Monograph have not as yet been printed for distribution to the public and the Government has failed to make the same a part of the record.

A portion of the argument advanced by the Government is directly related to the legal issue of whether the United States does in fact—rather than whether it should—possess under the Sherman Act the right of suit for treble damages. This argument is without merit. In refutation thereof the defendants-respondents specifically submit, with appropriate supporting authority, the following:

(1) The United States requires statutory authorization to sue for treble damages under the Sherman Act.

(2) The United States is nowhere granted statutory authorization to sue for treble damages under the Sherman Act.

(3) The United States was intentionally denied by Congress statutory authorization to sue for treble damages under the Sherman Act.

(4) The United States for 50 years has uniformly been viewed by the courts, the Department of Justice and Congress to lack statutory authorization to sue for treble damages under the Sherman Act.

I.

The United States requires statutory authorization to sue for treble damages under the Sherman Act.

The right of suit for treble damages under the Sherman Act is a statutory remedy unknown at common law, provided by the Act as part of a comprehensive plan creating statutory offenses and allocating among specified parties statutory remedies of suit. *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 497-8; *D. R. Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U. S. 165, 173-4.

These statutory remedies established by the Sherman Act are exclusive, with the result that no one—whether private individual or government—may claim a remedy under the Act unless such remedy is expressly created and allocated to the claimant by the Act. *Fleitmann v. Welsbach Street Lighting Company*, 240 U. S. 27, 28-9; *Minnesota v. Northern Securities Co.*, 194 U. S. 48, at 65 *et seq.*

Thus private individuals and state governments suing for equitable relief under the Sherman Act (prior to the enactment of the Clayton Act) have been held not entitled to such relief, because the statutory remedy of suing in equity under the Act was allocated exclusively to the United States. *Minnesota v. Northern Securities Co.*, *supra*; *Paine Lumber Co. v. Neal*, 244 U. S. 459, 471; *General Investment Co. v. Lake Shore & Michigan So. Ry. Co.*, 260 U. S. 261, 286.

As this Court emphasized in *Geddes v. Ananconda Mining Co.*, 254 U. S. 590:

“It is now the settled law that the remedies provided by the Anti-Trust Act of 1890 for enforcing the rights created by it are exclusive * * *” (p. 593).

And again, in the *Lake Shore case, supra*:

“As respects the Sherman Anti-Trust Act as it stood before it was supplemented by the Clayton Act, this Court has heretofore determined that the civil remedies specially provided in the act for actual and threatened violations of its provisions were intended to be exclusive and that those remedies consisted only of

(a) suits for injunctions brought by the United States in the public interest under §4 and

(b) private actions to recover damages brought under §7. * * *

The present suit for an injunction, brought by a private corporation in its own interest, was not within those remedies, and so could not be maintained under that act standing alone” (p. 286).

The United States accordingly may not claim the right of suit for treble damages under the Sherman Act unless such right is expressly created and allocated to the United States by the Act.

This conclusion in nowise conflicts with the alleged doctrine that the United States may have the benefit of rights granted by statute in general terms—thus not expressly to the United States. See *Dollar Savings Bank v. United States*, 19 Wall. 227, 239 and similar authority cited by the plaintiff. The United States may be entitled to rights granted by statute without restriction to all parties of whatever description; it is not, however, entitled automatically to rights created and restricted by statute specifically to named parties. *Davis v. Pringle*, 268 U. S. 315, 317-9; *United States v. Securities Corporation General*, 4 F. (2d) 619, 622 (App. D. C.), aff'd 269 U. S. 283. Otherwise, Congressional intent in carefully allocating specified rights to the parties named would be flouted.

II.

The United States is nowhere granted statutory authorization to sue for treble damages under the Sherman Act.

The right of suit for treble damages under the Sherman Act is created solely by Section 7 of the Act.

The United States consequently may exercise this new right of suit for treble damages—as the plaintiff conceded in its complaint and prior argument—only if Section 7 authorizes such suit.

Section 7 of the Sherman Act creates and allocates this right of suit for treble damages solely to any “person” as defined in the Act:

“Sec. 7. Any *person* who shall be injured in *his* business or property by any other *person* or *corporation* by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by *him* sustained, and the costs of suit, including a reasonable attorney’s fee” (July 2, 1890, Chap. 647, Sec. 7, 26 Stat. 210).*

The United States thus may exercise this new right of suit for treble damages—by authority of Section 7—only if the United States is any “person” as defined in the Act.

An examination of the Sherman Act reveals that any “person” as defined in the Act does not include the United States.

* Italics ours throughout this brief.

(a) Normal Meaning of "Person".

The Act, by the mere use of the term any "person", does not automatically include the United States as a "person".

The term "person" as used in a statute is normally viewed (in the absence of specific expansion) to include merely natural individuals—and possibly corporations. *Bouvier's Law Dictionary* (1914), pages 2574-2575; *Black's Law Dictionary* (1933), pages 1355-1356. And, as early pointed out in *Levy v. McCartee*, 6 Pet. 102:

"The legislature must be presumed to use words in their known and ordinary signification, unless that sense be repelled by the context" (p. 110).

The term "person" as used in a statute may occasionally be given the abnormal meaning of including the United States, when such abnormal meaning is clearly called for by "the connection in which the word [person] is found". *Ohio v. Helvering*, 292 U. S. 360, 370, cited by the plaintiff.

The term "person" as used in a statute such as the Sherman Act, however, granting substantive rights to and imposing burdensome liabilities upon any "person", is never held to have the abnormal meaning of including a sovereign such as the United States without clear statutory language directing such inclusion.

Recent Cases (1941), 54 Harv. L. Rev. 518:

"Whether the word 'person' includes the United States depends on the context and purpose of the statute in which it is found. * * * but the United States is generally not so included" (p. 519).

Judge Chase, in the instant case:

"Ordinarily the word person in a statute does not include the government.

"There is ample reason here, as there was in *Davis v. Pringle*, 268 U. S. 316, where the meaning of the word 'person' as used in Sec. 64 (a) (5) of the Bankruptcy Act was under consideration, for saying that if Congress had intended to include the government in Sec. 7 the 'ordinary dignities of speech would have led to the mention of the United States' " (114 F. (2d) 413, at 414).

In *United States v. Fox*, 52 N. Y. 530, aff'd 94 U. S. 315, it was expressly held that the United States was not a "person" within the meaning of a statute granting substantive property rights to "persons". Ruled the courts:

"In construing a statute, words are to be taken in their ordinary sense, unless, from a consideration of the whole act, it appears that a different meaning was intended.

"The word person does not, in its ordinary or legal signification, embrace a * * * government; * * *" (52 N. Y. 530, at 535).

"The term 'person' as here used applies to natural persons, and also to artificial persons,—bodies politic, deriving their existence and powers from legislation,—but cannot be so extended as to include within its meaning the Federal Government. It would require an express definition to that effect to give it a sense thus extended. And the term 'corporation' in the statute applies only to such corporations as are created under the laws of the State" (94 U. S. 315, at 321).

(b) Sherman Act Use of "Person".

The Act, by its manner of using the term any "person", clearly indicates an intent not to embrace the United States within such term.

By Section 1 of the Act every "person" committing certain acts is subject to criminal suit for fines and im-

prisonment by the United States. To expand every "person" to mean any party who under any theory could be called a "person"—including the United States—would lead to the absurd result that the United States is considered to be subject to criminal suit by the United States. The Sherman Act is not so intended.

By Section 2 of the Act every "person" performing other acts is subject to criminal suit for fines and imprisonment by the United States. Again, to define every "person" as including the United States means that the United States is considered to be subject to criminal suit by the United States. Such definition is not intended.

By Section 3 every "person" once more is subject to criminal suit by the United States. The same reasoning applies.

By Sections 4 and 6 the United States is given remedies in addition to those of criminal suits against every "person"—i.e., equitable and condemnation remedies. The same reasoning applies.

By Section 7 any "person" may bring suits for treble damages against any other "person" or "corporation". The Sherman Act was never intended to expand "person" or "corporation" to include the United States and thereby to permit the claim of private parties that they may sue the United States for treble damages.

The observation of Judge Chase in the instant case, with reference to Section 7, is most pertinent:

"... if the federal government is included in the word 'person' as one who may sue civilly for damages it must be included in the phrase 'any other person or corporation' in the same section as one who may be sued; for there is absolutely nothing to indicate that Congress intended to use the same word twice in the same section without having its mean-

ing the same in each instance. The argument in support of the government's position is not only novel but proves too much when it leads to the imposition of such a liability by indirection" (114 F. (2d) 413, at 414).

Does the Government seriously contend that the United States—engaged as it is in a vast defense program involving price, production and other restraints minus the Congressional approval required in *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 225 *et seq.*—should be subject as a "person" to suit for treble damages?"

(c) Sherman Act Definition of "Person".

The Act indeed specifically defines the term any "person" in a manner to exclude from its meaning the United States.

"Person" is expanded, by Section 8 of the Act, in clear terms which spell out in detail such abnormal meaning as is to be given to the word.

"SEC. 8. The word 'person', or 'persons', wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country" (July 2, 1890, Chap. 647, Sec. 8, 26 Stat. 210; 15 U. S. Code, Sec. 7).

This statutory definition is clearly inapplicable to the United States.

It is argued that the statutory definition includes the United States, as the United States is a "corporation".

* In *United States v. Sherwood*, No. 500, this Term, the Government itself is arguing that the United States is not a "person" under a statute permitting a judgment creditor to bring an action, in the place of his judgment debtor, against a "person" indebted to the judgment debtor.

See *Dixon v. United States*, 1 Brock. 177, 7 Fed. Cas. 761 (Cir. Ct. Va.) and similar cases cited by the plaintiff. This argument has no merit, as the United States is not a corporation in the statutory sense. *Davis v. Pringle*, 268 U. S. 315, 317-19; cf. *Georgia v. Adkins*, 10 Fed. Cas. 241, 242-3 (C. C. N. D. Ga.).

In the latter case the court, in ruling that a sovereign state was not a "corporation" within the meaning of the statute there involved, stated:

"I am of the opinion that congress intended the term 'corporation,' as used in this act, to be understood in its general, obvious, and natural meaning; and, therefore, it does not include the term 'state.' And so far as my limited researches go, I am unable to discover a single case in the supreme court, or in any of the circuit or district courts of the United States, wherein it has been decided that the term 'corporation'—body corporate or politic—when used in a statute, includes a 'state', or where the one term is used as a synonym for the other" (pp. 242-243).

Indeed, if the United States were to be considered a "corporation", the statutory language of Section 8 demonstrates a clear intent to exclude the type of corporation represented by the United States. As noted previously, Section 7 permits treble damage actions to be brought against any "person or corporation"—thereby carefully declaring that "person" is not the same as "corporation". Section 8 then specifically defines "person" to include only a limited type of "corporation", namely "corporations * * * existing under or authorized by the laws of" some sovereign entity. "Person" includes only the creatures existing "under" or authorized "by" the United States—not the United States itself.

Assuming that the United States might loosely be termed a corporation existing under or authorized by the Constitution—which is part of the “supreme law of the land” *McCulloch v. Maryland*, 4 Wheat 316, and *Ex Parte Siebold*, 100 U. S. 371, cited by the plaintiff—the United States still cannot properly be termed a corporation existing under or authorized by the “laws of the United States.” For the Constitution is not one of the “laws of the United States.” The Constitution and Congressional statutes repeatedly recognize the distinction between the Constitution and the “laws of the United States,” as shown by the following:

Constitution, Article III:

“SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the *Laws of the United States*, and Treaties made, or which shall be made, under their Authority * * *”

Constitution, Article VI:

“This Constitution, and the *Laws of the United States* which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land * * *”

28 U. S. C. A., Section 41:

“The district courts shall have original jurisdiction as follows:

“(1) * * * where the matter * * * arises under the Constitution or *Laws of the United States* * * *.”

28 U. S. C. A., Section 71:

“Any suit * * * arising under the Constitution or *laws of the United States* * * *, may be removed * * *”

To refer to judicial authority interpreting the phrase "laws of the United States":

Railroad Co. v. Mississippi, 102 U. S. 135:

"* * * a case in law or equity * * * may, properly, be said to arise under the Constitution or a *law of the United States*, whenever its correct decision depends on the construction of either;

"* * * cases arising under the *laws of the United States* are such as grow out of the legislation of Congress * * *" (p. 141).

Tennessee v. Davis, 100 U. S. 257:

"Cases arising under the *laws of the United States* are such as grow out of the legislation of Congress, * * *" (p. 264).

Beck v. Johnson, 169 Fed. 154 (C. C. W. D. Ky.):

"Concerning rules and regulations made by executive officers under the authority of Congress, after careful consideration we have concluded that all of them * * * are not themselves '*laws of the United States*' within the meaning of that phrase in the removal act. In other words, we think that when Congress used that phrase it meant acts of Congress * * *" (p. 162).

In short, a corporation existing under or organized by the laws of the United States is a corporation existing under or authorized by the Acts of Congress. Cf. *Pacific Railroad Removal Cases*, 115 U. S. 1.

It should be emphasized that there is nothing odd in the alleged fact that federal corporations—existing under and authorized by the "laws of the United States" and therefore expressly defined in Section 8 of the Sherman Act to be a "person"—may have rights of suit under the Sherman

Act which the United States as such lacks. Congress purposely creates each of these federal corporations to act in a manner distinct from—to exercise powers denied to—the traditional departments of the United States. As stated in *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381:

“Because of the advantages enjoyed by the corporate device compared with conventional executive agencies, the exigencies of war and the enlarged scope of government in economic affairs have greatly extended the use of independent corporate facilities for governmental ends” (p. 390).

Accord: *United States ex rel. Skinner & Eddy Corp. v. McCarl*, 275 U. S. 1, 8.

There is a very real distinction between the United States and the corporations existing under and authorized by its laws.

United States v. Strang, 254 U. S. 491, in referring to a federal corporation, stated:

“Notwithstanding all its stock was owned by the United States it must be regarded as a separate entity” (p. 493).

Sloan Shipyards Corp. v. United States Shipping Board Emergency Fleet Corp., 258 U. S. 549, pointed out with respect to the incorporation of a federal corporation that:

“The meaning of incorporation is that you have a person, and as a person one that presumably is subject to the general rules of law” (p. 567).

later stating that a contract entered into by the federal corporation demonstrated that:

“The distinction between it and the United States is marked * * *” (p. 569).

(d) *Davis v. Pringle.*

The situation here involved is analogous to that of *Davis v. Pringle*, 1 F. (2d) 860 (C. C. A. 4th), aff'd 268 U. S. 315, wherein it was held that the United States could not as any "person" claim priority under the Bankruptcy Act.

The Sherman Act, creating and allocating rights of action, first deals with the status of the Federal Government and subsequently with that of private persons. The Act expressly grants to the United States rights to sue for fines, imprisonment, injunctions and forfeitures, and then grants to any "person" the right to sue for treble damages.

In similar fashion the Bankruptcy Act of the *Pringle* case, creating and allocating rights of priority, first expressly dealt with the status of the Federal Government and subsequently with that of private parties. This Act initially gave a right of priority to tax claims of the United States and then gave another right of priority to claims of any "person". As summarized in the *Pringle* case:

"The statute provides the following order of priority:

"(a) The court shall order the trustee to pay all taxes legally due to the United States * * * in advance of the payment of dividends to creditors.

(b) Debts to have priority, except as herein provided, and to be paid in full, and the order of payment shall be: * * * (5) debts owing to any person who by the laws of the states or the United States is entitled to priority'" (1 F. (2d) 860, at 862).

The Sherman Act provides an expansion of the term any "person" which includes a type of "corporation" but fails to include the United States.

The Bankruptcy Act provided a somewhat similar expansion. As stated in the *Pringle* case:

“The statute * * * gives this definition: ‘(19) “Persons” shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations.’ ” (1 F. (2d) 860, at 863).

The Circuit Court of Appeals in the *Pringle* case held that the Bankruptcy Act authorized the United States to claim priority only as the “United States”—i.e., with respect to taxes—and not as any “person” or “corporation”.

The reasoning of the Circuit Court of Appeals, as applied to the instant case, necessitates the conclusion that the Sherman Act authorizes the United States to claim rights of action only as the “United States”—i.e., with respect to suits for fines, imprisonment, injunctions and forfeitures—and not as any “person” or “corporation”. The reasoning of the Court was as follows:

“It is argued, * * * that priority is given the United States * * * by Section 64b (5), being Comp. St. Sec. 9648: ‘Debts owing to any person who by the laws of the states or the United States is entitled to priority.’ This grade of priority is not given to the United States * * * unless the United States falls under the designation of ‘any person’. The statute itself gives this definition: ‘(19) “Persons” shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents,

officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations.' Section 1, cl. (19), Bankruptcy Act of 1898 (Comp. St. Sec. 9585 (19)).

"The failure to include the United States and the states in the definition could not have been inadvertent. *The United States and the several states of the Union are not persons, and are not commonly thought of as persons*, and if it had been intended that 'persons' should have such a comprehensive and unusual meaning as to include them, the framers of the definition would have said so.

"Again, when the Congress had already dealt with claims of the United States under the name of the United States, and had deliberately limited its priority to taxes, it is hardly reasonable to attribute to the Congress an intention to deal again with the claims of the United States and include them in a provision relating to debts of 'any person' " (1 F. (2d) 860, at 862-3).

This Court affirmed the holding below in language expressly approving of the logic used by the lower court, despite a vigorous contention by the Government in its brief that—under *Dixon v. United States*, 1 Brock. 177, 7 Fed. Cas. 761 (Cir. Ct. Va.) and other cases now cited on the very same point by the present plaintiff—the United States was at least a "corporation". Said this Court:

"It may be assumed that the priority must be found if at all in the Bankruptcy Act * * * and the provisions as to priority in §64 with which we are principally concerned. By 'a' of that section 'The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States * * * in advance of the payment of dividends to creditors.' This taken by itself would seem to exclude other

debts. But the section goes on in 'b' to give priority in the order named to '(5) debts owing to any person who by the laws of the States or the United States is entitled to priority,' and the Government argues that by §1 (19) 'persons' shall include corporations and that the United States is a corporation and therefore within these words. Being within them, it is said, it is entitled to priority by a law of the United States, the well known Rev. Stat. Section 3466. It is said that no other person except the United States itself can be discovered who is given the right by its laws.

"We attach little value to this logical concatenation as against the direct effect of §64, taken according to the normal usages of speech. It is incredible that after the conspicuous mention of the United States in the first place at the beginning of the section and the grant of a limited priority, Congress should have intended to smuggle in a general preference by muffled words at the end. The States are mentioned in (5) before the United States, showing that their laws were primarily in mind. The United States seems added to avoid some possibly overlooked case. *The ordinary dignities of speech would have led to the mention of the United States at the beginning of the clause, if within its purview. Elsewhere in cases of possible doubt when the Act means the United States it says the United States.* We are of opinion that to extend the definition of 'person' here to the United States would be 'inconsistent with the context' * * *'' (268 U. S. 315, at 317-318).

Accord: *United States v. Securities Corporation General*, 4 F. (2d) 619, 622 (App. D. C.), aff'd 269 U. S. 283; *Abeken v. United States*, 26 F. Supp. 170, 172 (E. D. Mo.); *District of Columbia v. American Oil Co.*, 39 F. (2d) 510, 512 (App. D. C.).

(e) Government Citations.

The Sherman Act repeatedly denies to the United States the right of suit for treble damages: First, through excluding the right of suit for treble damages from those rights of suit expressly granted to the United States; second, through granting the right of suit for treble damages expressly to a "person" who normally is not considered to be the United States; third, through making it impossible for a "person" to be the United States by designating this "person" as (unlike the United States) one who not only sues but also is sued; and fourth, through defining this "person", entitled to sue, as including merely corporate creatures of the United States and not the United States itself.

The Government has failed to cite a single authority sanctioning the construction by the courts of the Sherman Act otherwise than as thus written.

The United States may, of course, exercise without statutory authority those rights granted by the common law to all property owners—not restricted to any "person". See *Cotton v. United States*, 11 How. 229, *Dugan v. United States*, 3 Wheat. 172, and *United States v. Gear*, 3 How. 120, cited by the plaintiff.

The property and activities of the United States, moreover, may in certain instances be referred to in statutes referring loosely to the property and activities of persons. See dicta in *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, and similar cases cited by the plaintiff.* In *Stanley v. Schwalby*, 147 U. S. 508, a procedural statute of limi-

* *Ohio v. Helvering*, 292 U. S. 360 (state engaged in the liquor business a taxable "person"); *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84 (United States a "resident"); *Nardone v. United States*, 302 U. S. 379 (federal agents "persons" forbidden to tap wires).

tations referring to actions against any person was stated to refer as well to actions against the United States.

These authorities, however, scarcely bear upon the question at issue.

A statute granting new substantive rights to the United States, and additional substantive rights to any "person," is given the abnormal meaning of including the United States within the term any "person" only when Congress by express definition has given to the term this abnormal meaning. Cf. *Lincoln v. Ricketts*, 297 U. S. 373, 376-7, and the English statutes cited by the plaintiff on page 15 of its brief. There is no such definition in the Sherman Act. In the present case the plaintiff desires this Court to exercise the legislative function of supplying such definition to the Sherman Act.*

III.

The United States was intentionally denied by Congress statutory authorization to sue for treble damages under the Sherman Act.

Not only does the Sherman Act fail to authorize the United States to sue for treble damages, but the Congressional debates on the Act indicate that such authorization was deliberately withheld.

* Of little value are the miscellaneous state cases cited by the plaintiff as to whether states, counties, etc. might at times be considered to be "persons". The Government failed to point out that these state cases on subordinate political subdivisions are in utter confusion—that many authoritative cases are available which arrive at conclusions directly opposed to those set forth by the Government. Certain of these cases not cited by the Government include *Banton v. Griswold*, 95 Me. 445, 448 (state or government not a person); *Malone v. Peay*, 159 Tenn. 321, 326 (state not a person); *Onondaga County Savings Bank v. Love*, 166 Misc. 697, 701 (state or government not a person); *Osterhoudt v. Stade*, 133 App. Div. 83, 85 (state neither a person nor a corporation).

(a) General Debates on Sherman Act.

The debates on the Sherman Act generally disclose a complete scheme of supplementary remedies, each for its own purpose.

On the one hand, Section 7 was intended by its provisions authorizing any "person" to sue for treble damages to protect the individual competitor whom a "monopoly" might attempt to destroy, and to protect weak individual buyers against the oppressive power of a "combination." Treble instead of remedial damages were realized to be an extreme remedy—contrary to usual concepts of Anglo-Saxon law. Such remedy was to be granted to the private party who was thought to need a gambling possibility of profit in the form of threefold the actual damages to encourage him to face the risk and expense of such a suit. (The Federal Government, with all the resources of the country at its disposal and with other weapons of suit, needed no such gambling incentive of threefold recovery.)

On the other hand, the theory of governmental enforcement of the Sherman Act was that the United States should have power to proceed against violations of the statute by injunction—as a preventive measure—and by punitive proceedings for fines, imprisonment and forfeitures in such cases as might warrant action of that nature. These powers were deemed adequate. There is nothing in the Act or in the debates to indicate an intent that the United States was to bring suits for treble damages—and this is borne out by the fact that the United States has never before done so throughout the 50 years since the statute was enacted. Indeed had the Act's framers intended such suits for damages they would, at most, have permitted the United States to recover actual damages. The United States was adequately supplied with weapons of punishment and would be entitled

at best to remunerative, rather than with three-fold punitive, damages:

To borrow the analysis of the Sherman Act as set forth by this Court in *D. R. Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U. S. 165 and quoted by the plaintiff:

“* * * founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent

not the mere injury to an individual which would arise from the doing of the prohibited acts,

but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented,

and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions” (p. 174).

(b) Views of Senators Sherman and Hoar.

Reference to explanatory statements by the sponsors and drafters of the Sherman Act give definite corroborative evidence that statutory authorization to bring treble damage actions was intentionally withheld from the United States. Needless to say such statements are here relevant. *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 474-5. *United States v. Great Northern Railway Co.*, 287 U. S. 144, 154-5; *Wright v. Vinton Branch*, 300 U. S. 440, 463-4; *Hassett v. Welch*, 303 U. S. 303, 307-10.

Senator Sherman, when he reintroduced his Bill on March 18, 1890, provided in Section 1 that the United States should be entitled to bring various civil actions and in Section 2 that any “person” should be entitled to sue any “person” or “corporation” for double damages.

Section 1 (in part):

“* * * And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, and to issue all remedial process, orders, or writs proper and necessary to enforce its provisions. And the Attorney-General and the several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution.”

Section 2:

“That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination defined in the first section of this Act may sue for and recover, in any court of the United States of competent jurisdiction, without respect to the amount involved, of any person or corporation a party to a combination described in the first section of this Act, twice the amount of damages sustained and the costs of the suit, together with a reasonable attorney's fee.”

This Bill was fully discussed by Senator Sherman and by Senator Hoar, among others. In the discussion it was pointed out that under Section 1 the United States was entitled to bring various civil actions including those for simple damages and for equitable relief, and that under Section 2 private parties were entitled to sue for double damages. It was expressly stated by Senator Sherman—and agreed to by Senator Hoar—that Section 2 in giving to any “person” the right to sue for double damages gave such right only to private parties and not to the United States.

“*Mr. Sherman:* * * * If the Senator from Massachusetts will read the second section of the bill he will find that that alone deals with private suits.

* * * * *

"It is *the second section* that gives the civil suit, and that is *not to be prosecuted at all by the United States or by the officers of the United States*. The first section deals with the public injury to the people of the United States and there the suit is brought in the name of the United States to restrain, limit, and control such arrangements so far as they are illegal. *The second section gives a private remedy to every person injured*. It seems to me the two sections are as distinct from each other as possible.

"*Mr. Hoar*: The Senator from Ohio states, in my very humble judgment, two entirely different and conflicting and inconsistent propositions. I agree and thoroughly understand that *the second section of the bill gives individuals the right to private suits*. I leave that out as settled. I am looking at the first section alone. The Senator says that the first section provides nothing but suits for public offenses, which are criminal suits and to be tried in the name of the United States, as for an offense against the United States. The language of the section is:

"And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section.

"I should like to ask the Senator again, does he understand that the United States is to enforce this proposed statute by a civil suit, and not by a criminal proceeding?

"*Mr. Sherman*: I say that in a civil suit brought in the name of the United States the United States may sue on a contract; they may sue for a neglect; they may sue for a great many things. Those are civil suits. The distinction between a civil suit and a criminal suit, I need not tell the Senator from Massachusetts.

"*Mr. Hoar*: I understand that. What will be the judgment?

"*Mr. Sherman*: It may be a judgment of ouster of the corporation; it may be a judgment for dam-

ages. Civil suits and criminal suits are easily distinguished.

"Mr. Hoar: There is no difficulty in that.

"Mr. Sherman: Very well. This is a civil proceeding commenced by the people of the United States against these corporations, and a judgment may be, as in ordinary cases, an ouster of the power of a corporation; it may be for damages; there may be an injunction; there may be proceedings in *quo warranto*, and so of the other ordinary civil proceedings which are fixed by the judiciary act of the United States.

"But the second section provides purely a personal remedy, a civil suit also by citizens of the United States" (21 Cong. Rec. 2563-2564).

The March 18, 1890 Sherman Bill was later supplemented, by amendment, with additional sections providing for penalties of fines and imprisonment. See the March 25, 1890 Sherman Bill. Senator Hoar thereupon objected to a further amendment providing for additional penalties, saying:

"The injury to the United States or to anybody else in the way of property or business or any other material necessity is satisfied in another way."

referring in the same breath to

" * * the sum which is to be recovered by the United States if it has suffered in any of its properties or functions which would make it a suitor for it to assert its own rights * * *"* (21 Cong. Rec. 2641).

Senator Hoar, in other words, believed that any injury to the United States was sufficiently satisfied under Section 1 of the Sherman Bill (providing the United States with various civil remedies including the right to sue for dam-

ages), and also under the March 25, 1890 supplemental sections (providing for fines and imprisonment).

The Senator could not have been referring to injury being satisfied under Section 2 of the Bill (permitting suits for double damages), because Senator Hoar had accepted Senator Sherman's explanation of Section 2 as relating to individuals and private suits and "not to be prosecuted at all by the United States." To this Senator Hoar had stated:

"I leave that out as settled."

Senator Hoar—as plaintiff pointed out below—eventually rewrote most of the Sherman Bill. In his revision the Senator cut out completely Section 1 of the Sherman Bill (with its provisions for civil suits by the United States, including the right to sue for damages). The Senator set forth instead, in Sections 1, 2, 3, 4 and 6 of his revision, clearly/delineated remedies of criminal, equitable and condemnation proceedings brought by the United States. In his revision, however, the Senator kept almost intact Section 2 of the Sherman Bill (raising the double damages therein provided to treble damages and renumbering it Section 7).

This Hoar version of the Sherman Bill—lacking the original Section 1 Government suit for damages, but retaining the original Section 2 private suit for damages described as not to be brought by the Government—was enacted into law as the Sherman Act.

It is interesting to speculate why Senator Hoar deleted the original Section 1 thought to give to the United States the right to sue for damages. Apparently he had come to the conclusion that the United States did not need this right. He had expressed himself as dubious that the United States could successfully prove in court that it had suffered damages (21 Cong. Rec. 2567).

Obviously Senator Hoar was justified in believing that the United States did not need the right to sue for damages. The United States is given by the Sherman Act sweeping rights of suit. It may thereby protect itself fully from injury—for it may not only punish violations of the Act but may put an end to such violations at their very inception.*

Certainly if Senator Hoar had thought that the United States did need the right to sue for damages, he would at most have retained the original Section 1 permitting suits by the United States for simple damages. He had opposed the addition of penalties other than as provided finally in his revision of the Bill—and consequently would have objected to the granting to the United States of the right to punish not only through fines, imprisonment, injunctions and forfeitures but also through three times any possible damages.

* The very allegations of the plaintiff in the complaint herein—biased though they be—demonstrate the lack of need of the United States for the right to sue for damages. According to the complaint the Procurement Division of the Government (in the face of a business boom and the rising prices of 1936 and early 1937, of which this Court may take judicial notice, *Dayton Power & Light Co. v. Public Utilities Comm.*, 292 U. S. 290, 311; *Michigan Bell Telephone Co. v. Odell*, 45 F. (2d) 180, 185 (E. D. Mich.)) purchased tires repeatedly from the defendants on the basis of bids submitting uniform prices. The Division was apparently satisfied with the lowness of the prices bid, and seemingly recognized that the uniformity among bids might as readily result from innocent factors such as price lists as from illegal factors, for the Division not only accepted the bids but asked for more. Subsequently, according to the complaint, the Procurement Division objected to further bids submitting uniform prices (in the middle of 1937 when business conditions had turned for the worse) and merely by

(1) refusing to buy tires from the defendants on a uniform bid basis—instead buying from another source—

(2) plus notifying the defendants that uniform bids were deemed to be *prima facie* illegal under the criminal and equitable provisions of the Sherman Act

broke the Federal Government tire market and obtained the tire prices it then desired.

(c) Particular Sections of the Sherman Act.

The particular sections of the Sherman Act, drafted by Senators Sherman and Hoar, fully accord with their intent to deny to the United States the right of suit for treble damages.

For example, as stated above, in Section 8 of the Sherman Act any "person" entitled to sue for treble damages is expanded to include specified corporations and associations, without including the United States. In view of the well recognized usage referred to in II (a), *supra* and the express holding of *United States v. Fox*, 94 U. S. 315 (the most recent Supreme Court case on the point)—to the effect that the word "person" unenlarged means a natural individual—Congress would have expressly included the United States within the definition of any "person" had it intended the United States to be a "person" entitled to sue for treble damages. The doctrine of *expressio unius est exclusio alterius* clearly applies and should be decisive.

In federal statutes where it is intended that the United States shall fall within the category of "person", the definition thereof specifically includes governments. One example is the Securities Act of 1933, where the word "person" is defined to include "a government or political subdivision thereof." Other examples include the Civil Aeronautics Act of 1938, Section 1 (27), which defines "person" to include any "body politic"; and Section 13 (1) of the Interstate Commerce Act, which provides for complaints to the Interstate Commerce Commission by any person, etc., "or any body politic or municipal organization." Compare also the English practice, referred to on page 15 of the Government's brief.

To refer to another section of the Sherman Act, Section 7, in giving any "person" the right to sue for treble dam-

ages, provides for additional recovery of "a reasonable attorney's fee." This provision for a professional fee is clearly inapplicable to the Federal Government and affords further indication that the Section was not intended to give rights to the United States.

(d) Proposed Amendment to Sherman Act.

It is pointedly significant that in 1900 the House of Representatives, when attempting to establish a new right of suit under the Sherman Act, provided that the new right was to be exercised

"* * * at the suit of any person or persons, or corporation or association, or by and in behalf of the United States * * *."

See §9 of H. R. 10539, 56th Cong., 1st Sess., which was passed by the House but failed to become law.

I V .

The United States for 50 years has uniformly been viewed by the Courts, the Department of Justice and Congress to lack statutory authorization to sue for treble damages under the Sherman Act.

For 50 years it has been an accepted and uniformly repeated interpretation of the Sherman Act that the United States was exclusively to exercise the criminal and preventative rights of suit contained in Sections 1-6 while private individuals and corporations were exclusively to exercise the right of treble damage suit contained in Section 7.

(a) The Courts.

The lower courts, when first presented with the problem of interpreting the then newly enacted Sherman Act, consistently took this position.

Pidcock v. Harrington, 64 Fed. 821 (C. C., S. D. N. Y.):

"* * * a *private* person is given (section 7) the right to maintain an action at law; * * * The first three sections are penal statutes. They give no civil remedy. Section 4 vests the right to institute proceedings in equity in the district attorneys of the United States, and, together with section 5, prescribed the procedure in such suits. Section 6 provides for the seizure and forfeiture to the United States of property illegally owned under the provisions of the act. So far, then, the act is a public act providing no private remedy: * * *. The only section which gives a private remedy is the seventh * * *" (p. 822).

Greer, Mills & Co. v. Stoller, 77 Fed. 1 (C. C. W. D., Mo.):

"Section 7 gives to the *private* person 'injured in his business or property by any other person or corporation by reason of anything forbidden, or declared to be unlawful by this act,' a right to sue in a circuit court of the United States in the district in which the defendant resides or is found for threefold damages by him sustained. The statute, being highly penal in its character, must be strictly construed; and, having created a new offense, and imposed new liabilities, and having provided the modes of redress to the public and the private citizen, by established rules of construction, these remedies are exclusive of all others" (p. 3).

United States v. Patterson, 201 Fed. 697 (S. D., Ohio), rev'd on other grounds 222 Fed. 599 (C. C. A. 6th), cert. den. 238 U. S. 635:

"The act does not primarily grant any right to be enforced in a civil action. It creates an offense, a crime, describing what the crime is. To do the

acts proscribed in the first and second sections is declared to be unlawful; that is to say, criminal. Hence the right given by Section 7 to an *individual* to recover for injury to his business or property with threefold damages, and the right given by section 4 to the *government* to prevent by injunction a continuance of the acts complained of, are rights growing out of the commission of a crime, by whomsoever it may be, whose acts also subject him to the criminal penalties of the statute. If he has been guilty of a crime described in sections 1 or 2, then he may be restrained by the *government* in a civil action, or be compelled by an *individual* who has been injured in his business or property to respond in threefold damages" (p. 714).

No change in the views of the lower courts has occurred.

Quemos Theatre Co., Inc. v. Warner Bros. Pictures, Inc.,
C. C. H. Trade Reg. Serv. §25,599 (D. N. J.):

"* * * Section 7, the three-fold damage clause of the Sherman Act was designed to supply an ancillary force of *private* investigators to supplement the Department of Justice in law enforcement" (p. 26,702).

Glenn Coal Co. v. Dickinson Fuel Co., 72 Fed. (2d) 885
(C. C. A. 4th):

"* * * It is well known that the main purpose of the Anti-Trust Act was to protect the public from monopolies and restraint of trade and the *individual* right of action was but incidental and subordinate" (p. 889).

This Court has reaffirmed this position of the lower courts.

Standard Sanitary Manufacturing Company v. United States, 226 U. S. 20 (cited by the plaintiff):

"The Sherman Act provides for a criminal proceeding to punish violations and suits in equity to restrain such violations, and the suits may be brought simultaneously or successively. * * * Besides a suit by the *Government* there may be an action for damages by a '*person* injured by reason of anything forbidden by the Act'" (p. 52).

General Investment Co. v. Lake Shore & Michigan So. Ry. Co., 260 U. S. 261:

"As respects the Sherman Anti-Trust Act as it stood before it was supplemented by the Clayton Act, this Court has heretofore determined that the civil remedies specially provided in the act for actual and threatened violations of its provisions were intended to be exclusive and that those remedies consisted only of

(a) suits for injunctions brought by the *United States* in the public interest under §4 and

(b) *private* actions to recover damages brought under §7" (p. 286).

Tigner v. Texas, 310 U. S. 141:

"The Sherman Law originally employed the injunction at the suit of the government, *private* action for triple damages, criminal prosecution and forfeiture. Later the injunction was made available to private suitors" (p. 148).

The courts in fact have expressly ruled that a sovereign government—such as the United States—is not a "person" within the meaning of the Sherman Act, and thus can neither be sued nor sue under Section 7.

In *Lowenstein v. Evans*, 69 Fed. 908 (C. C. D. S. C.), the State of South Carolina was sued as a "person" for treble damages under Section 7 of the Sherman Act. The Court held that a sovereign government such as a state—and thus, impliedly, a sovereign government such as the United States—was neither a "person" nor a "corporation" within the meaning of Section 7 and therefore could not be sued thereunder.

"The section of the act of 1890, sued upon, gives a right of action for any injury by any other person or corporation. *The state is not a corporation. A corporation is a creature of the sovereign power, deriving its life from its creator. The state is a sovereign having no derivative powers, exercising its sovereignty by divine right. * * * Nor can it be said that the state is a person in the sense of this act*" (p. 911).

In *City of Atlanta v. Chattanooga Foundry*, 101 Fed. 900 (C. C. E. D. Tenn.), reversed on other grounds 127 Fed. 23 (C. C. A. 6th), affirmed 203 U. S. 390, cited by the plaintiff, the City of Atlanta was held entitled to sue as a "person" under Section 7 of the Sherman Act. This was because, conforming to the language of Section 8, the City was a "corporation existing under * * * [and] authorized by the laws of * * * [a] state"—which is clearly not the case with the United States. The Court expressly stated, however, in the portion of its opinion not reversed but rather referred to at 127 Fed. 29 as a "very full and able opinion", that the United States might not sue under Section 7:

"The action provided for in section 7 of the act could neither be brought in the name of the United States, nor prosecuted as a popular or *qui tam* action, the remedy being expressly restricted to the

party 'injured in his business or property' " (101 Fed. 900, at 904).

The courts have repeatedly ruled that the Sherman Act in providing for treble damages was punitive in nature—although such damages were not a "penalty" in the technical sense of having no compensatory features. *Fleitmann v. Welsbach Street Lighting Company*, 240 U. S. 27, 29; *American Banana Co. v. United Fruit Co.*, 153 Fed. 943, 944 (C. C. S. D. N. Y.); *Decorative Stone Co. v. Building Trades Council of Westchester County*, 23 Fed. (2d) 426 (C. C. A. 2nd), cert. den. 277 U. S. 594; *Greer, Mills & Co. v. Stoller*, 77 Fed. 1, 3 (C. C. W. D. Mo.); *Johnson v. Joseph Schlitz Brewing Co.*, 33 F. Supp. 176, 182 (E. D. Tenn.). Consequently they have emphatically ruled that such a punitive statute, setting up a carefully defined remedial structure that allocates specified kinds of relief to specified parties, must be construed as written and not broadened by implication. *D. R. Wilder Mfg. Co. v. Corn Products Refining Co.*, 236 U. S. 165, 173-175; *Fleitmann v. Welsbach Street Lighting Co.*, *supra*; *Hansen Packing Co. v. Armour & Co.*, 16 F. Supp. 784, 787 (S. D. N. Y.); *La Chappelle v. United Shoe Machinery Corp.*, 13 F. Supp. 939 (D. Mass.); *Seaboard Terminals Corp. v. Standard Oil Co.*, C. C. H. Trade Reg. Serv. §25,013, at p. 25,057 (S. D. N. Y.).

In short, the views of the courts during the past 50 years may be summarized along the lines of Judge Chase's ruling in the instant case:

"* * * the Act has heretofore been construed uniformly to give the government power to prosecute criminally and to secure injunctions and to give private parties by Sec. 7 the right to recover civil damages for injuries" (114 F. (2d) 413, at 414).

(b) The Department of Justice.

The Department of Justice has similarly taken the position (until the commencement of this suit) that the right to sue for fines, imprisonment, injunctions and forfeitures belongs to the United States while the right to sue for treble damages belongs to private individuals and corporations.

Section 7 has been in existence for 50 years and during this time up to the present action not one suit has been instituted by the Department, as a plaintiff, to recover treble damages thereunder. The Department has instituted hundreds of criminal and injunctive actions against defendants who—in many cases—were also sellers of goods to the Government, but has never preceded or followed such actions by a single treble damage suit.

The Department in fact has expressly declared that the United States is not authorized to sue for treble damages under Section 7 of the Sherman Act. As late as 1926 the Attorney General, in discussing why the United States had not brought suit under Section 7, explained to the Senate that

“Under Section 7, which gives to *private* persons the right to sue for injuries arising under the act, a number of actions have been instituted. The United States, however, under the statute is *not a party to suits under that section*” (Sen. Doc. No. 79, 69th Cong. 1st Sess.).

The Commissioner of Corporations, predecessor to the Federal Trade Commission, made in 1915 a Report to the President on Trust Laws and Unfair Competition which similarly recognized that the United States might proceed solely under the criminal, equitable and condemnation sections of the Sherman Act—while private parties alone were entitled to sue for treble damages.

"Judicial proceedings under the Sherman Law may be divided into five broad classes: (1) Criminal prosecutions; (2) suits in equity by the Government; (3) condemnation proceedings by the Government with respect to goods transported in interstate commerce; (4) actions by *private* parties for treble damages; (5) actions at law or suits in equity between private parties where the law has been pleaded in defense, or where relief has been affirmatively sought from restraints imposed by agreements" (p. 120).

Cf. the Ruling of the Attorney General that the Robinson-Patman Act does not apply to the United States (1936) 38 *Op. Att. Gen.* 539. The ruling was made despite—and without reference to—the fact that the Act forbids a "person" either to induce or to receive a price discrimination. If the United States is a "person" under the anti-trust acts, and thus under the Robinson-Patman Act, the United States may be subject to treble damage suits for receiving favorable price differentials.

(c) Congress.

Since the interpretation of Section 7 of the Act accepted by both the courts and Government administrators of the anti-trust laws over a period of many years has been that the United States may not sue for treble damages, and since during that time the Act has been amended and supplemented in many particulars—without changing this accepted interpretation—recognition must be given to this interpretation as the established Congressional intent.

This is confirmed by the reenactment in almost identical words of Section 7 of the Sherman Act after 24 years in Section 4 of the Clayton Act, despite the express recognition by Congress in thus legislating that the Section did not permit the United States to sue for treble damages.

Senator Culberson,* Chairman of the Senate Judiciary Committee, reported out the Clayton Bill in the Senate. In explaining the Bill he specifically listed the common types of action brought under the Sherman Act, *i. e.*, criminal prosecution, suit in equity and action for damages, and flatly stated with respect to Government suits under the Sherman Act and the new Bill that:

“There is no suit authorized by any of these statutes except a criminal prosecution or a suit in equity. *The United States does not bring a suit at law for damages*” (51 Cong. Rec. 13898).**

* Senator Culberson was not the type of legislator apt. to give “unconsidered opinions” as suggested by the Government. The Senator, in addition to being an exceptionally able lawyer, was twice Attorney General of Texas, twice Governor of that State, and for 24 years Senator in the United States Senate.

** Despite the misleading statements in the Government’s brief concerning their views, at pp. 38-39 and 70-78, the House sponsors of the Act were in complete accord with Senator Culberson—as shown by the following:

Representative Floyd, member of the Judiciary Committee in charge of the original debate on the Clayton Bill for the majority, referred to the treble damage section as follows:

“We propose, in the first place, in one of the sections of this bill, to give every *private* suitor who has a cause of action against a combination acting in violation of law triple damages under this bill, as he is given triple damages under section 7 of the Sherman Act against the offending corporation” (51 Cong. Rec. 9490).

Representative Volstead, member of the Judiciary Committee in charge of the original debate on the Clayton Bill for the minority, referred to the same section as follows:

“* * * I think that section may add quite a little to the remedy which *private* parties have in securing relief where they have been oppressed by unfair methods of competition” (51 Cong. Rec. 9079).

Representative Webb, Chairman of the Judiciary Committee, in charge of the final debate on the Clayton Bill, listed the following five civil remedies as available under the Bill: (1) treble damage actions by persons, (2) suspension of the statute of limitations during Government suits, (3) suits by the Federal Trade Commission, (4) injunctive suits by the United States, and (5) injunctive suits by persons (51 Cong. Rec. 16275). He then stated

The Clayton Act, it might be noted, by Section 16 gives to any "person" or "corporation" (not merely a corporation "existing under" or "authorized by" the "laws of the United States") the right to sue for injunctive relief. That Congress most emphatically felt that this Section 16 does not give to the United States as any "person" the right to sue for injunctive relief is shown by the provision of an entirely separate and independent Section—15—giving in express words to the United States the right to injunctive relief.

As has been pointed out by the plaintiff, at the end of Section 16 Congress added the proviso that "nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States," to proceed in equity against common carriers. In other words, despite Section 16, no "person" was to sue in equity against common carriers—the United States under Section 15 alone having this right.

The courts have repeatedly stated in accordance with Congressional intent that Section 16, while using the word any "person" or "corporation", is restricted to giving private parties injunctive relief.

that these remedies were cumulative and open to the individual and Government (51 Cong. Rec. 16276). By this last statement he could not have meant that all five remedies were open to the individual and likewise all five open to the Government—as argued in the Government's brief—because, for example, the Federal Trade Commission proceedings were not open to the individual. The Representative merely meant that the remedies were open to the individual and the Government in the manner designated in the Bill. The Representative had previously indicated that private individuals only were to sue for treble damages. Thus he had stated with respect to the treble damage section of the Bill that:

"they * * * give the *individual* the right to sue for treble damages

* * *

we are liberalizing the procedure in the courts in order to give the *individual* who is damaged the right to get his damages anywhere * * *" (51 Cong. Rec. 16274).

Thus in *Central Transfer Co. v. Terminal Railroad Ass'n*, 288 U. S. 469, this Court ruled that:

"* * * §16 of the Clayton Act * * * affects only the capacity of a *private* party to maintain a suit to restrain violations" (pp. 474-5).

Again, in *Duplex Printing Press v. Deering*, 254 U. S. 443:

"The Clayton Act * * * in §16 (38 Stat. 737), gives to *private* parties a right to relief by injunction in any court of the United States against threatened loss or damage by a violation of the anti-trust laws, under the conditions and principles regulating the granting of such relief by courts of equity. Evidently this provision was intended to supplement the Sherman Act, under which some of the federal courts had held, as this court afterwards held in *Paine Lumber Co. v. Neal*, 244 U. S. 459, 471, that a *private* party could not maintain a suit for injunction" (pp. 464-5).

If an administrative or judicial interpretation has been placed upon any provision or provisions of an Act such as Section 7 of the Sherman Act, and if subsequently Congress partially or substantially reenacts the statute leaving untouched the provision which has been so interpreted, the presumption arises that this interpretation was that intended by Congress. See *Komada & Co. v. United States*, 215 U. S. 392, 396; *Manhattan Properties, Inc. v. Irving Trust Co.*, 291 U. S. 320, 336. In *Brewster v. Gage*, 280 U. S. 327, this Court said:

"It is the settled rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration will not be disturbed except for weighty

reason. * * * The substantial reenactment in later Acts of the provision theretofore construed by the department is persuasive evidence of legislative approval of the regulation. *National Lead Co. v. United States*, 252 U. S. 140, 146. *United States v. Cerecedo Hermanos y Compania*, 209 U. S. 337, 339. *United States v. G. Falk & Brother*, 204 U. S. 143, 152" (pp. 336-37).

Also note *United States v. Republic Steel Corp.*, 11 F. Supp. 117, 123-4 (N. D. Ohio) (as to recognition of administrative rulings under the anti-trust laws); and *Inland Waterways Corp. v. Young*, 309 U. S. 517, 524-5 (as to recognition of administrative practice under the Banking Act—a case cited by the plaintiff).

(d) O'Mahoney Bill.

Congress has recently been considering S. 2719—a Bill prepared jointly by Senator O'Mahoney, Chairman of the Temporary National Economic Committee, and United States Assistant Attorney General Thurman Arnold.

This Bill, according to Senator O'Mahoney's statement of June 28, 1939, is intended to provide the United States with additional rights of suit under the Sherman Act such as a right to collect civil penalties, and thereby to supplement the present rights of suit of the United States under the Act. In listing the present rights of suit of the United States the Senator carefully pointed out that the private person, and not the Department of Justice, was entitled to sue for treble damages.

"The purpose of the bill which I have introduced today, after conferences with Assistant Attorney General Thurman Arnold, is to make the Anti-Trust Laws more effective by providing civil remedies which are calculated to deter corporate executives

from undertaking policies and practices which they have good reason to know are in restraint of trade and prohibited by law.

"One of the principal reasons why the Anti-Trust Laws have not heretofore prevented combinations and mergers hostile to the public interest is that the penalties and remedies for violations as now provided are altogether inadequate. Jail sentences are seldom imposed, because the public does not place an economic offense in the same category with an ordinary criminal offense involving moral turpitude. On the other hand, a \$5,000 fine is of no concern to the large corporation.

"There is only one other remedy worth mentioning available under existing law to the Department of Justice—the civil action for an injunction. *In addition, there is the action in damages by a private person who has been injured.* Neither of these remedies is effective.

"The new bill is designed to bring violations of the law home to officers and directors of corporations who are personally responsible for the economic offenses of the corporations they represent. The bill permits the United States, in effect, to bring a suit for damages against an offending corporation and against its individual directors and officers. It also permits the United States to bring suit to terminate the corporate employment of any officer or director who is responsible for a violation of the Anti-Trust Laws."

The introduction into Congress of S. 2719 points to the appropriate procedure for dealing with the question of suit by the United States for damages.

Should this Court deal with the question, as the Government submits, the Court must not only give a most distorted and unwarranted construction to the Sherman Act but must recognize in the United States a right to three-

fold or punitive—as distinguished from actual or remedial damages. The United States would thereby not merely be made whole; it would be given a new punishment to add to fines, imprisonment, injunctions and forfeitures.

Should Congress deal with the question, as defendants-respondents submit, Congress rather than the courts would be legislating upon the matter and would be able to weigh the relative merits of granting to the United States treble, double or remedial damages.

Conclusion.

The defendants-respondents most respectfully submit that—legal argument failing, as above demonstrated—the Government has relied in this case almost solely upon the claim that the remedies of the United States as provided in the Sherman Act are ill adapted to Government needs. The Government has principally argued that the United States is not adequately protected by its rights to fines, imprisonment, injunction and forfeitures—so therefore it must be given a new right.

The defendants-respondents have pointed out that this argument is completely irrelevant to a consideration of the legal issue here involved, as well as exceedingly questionable in fact.

By reason of the stress laid by the Government on this claim, however, the defendants-respondents desire in closing to refer to a most apt observation of this Court in the recent case of *Tigner v. Texas*, 310 U. S. 141. Speaking through Mr. Justice Frankfurter this Court firmly ruled with respect to an anti-trust statute that:

“How to effectuate policy—the adaptation of means to legitimately sought ends—is one of the most intractable of legislative problems. Whether

proscribed conduct is to be deterred by *qui tam* action or triple damages or injunction, or by criminal prosecution, or merely by defense to actions in contract, or by some, or all, of these remedies in combination, is a matter within the legislature's range of choice. Judgment on the deterrent effect of the various weapons in the armory of law can lay little claim to scientific basis. Such judgment as yet is largely a prophecy based on meager and uninterpreted evidence. * * *

"Legislation concerning economic combinations presents peculiar difficulties in the fashioning of remedies. * * * They are thus matters within legislative competence" (pp. 148-9).

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 484.—OCTOBER TERM, 1940.

The United States of America, Petitioner, vs. The Cooper Corporation, et al.	}	On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
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[March 31, 1941.]

Mr. Justice ROBERTS delivered the opinion of the Court.

We took this case because it presents the important question whether the United States may maintain an action for treble damages under § 7 of the Sherman Act.¹

The complaint charged the respondents had illegally combined and conspired to fix collusive prices of articles purchased by the United States; alleged the money damage inflicted upon the United States thereby, and sought judgment for three times that amount. The District Court granted a motion to dismiss the complaint on the ground that the United States is not a person as the term is used in § 7 of the Sherman Act.² The Circuit Court of Appeals affirmed the judgment.³

Section 7 provides:

"Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee."

The United States is a juristic person in the sense that it has capacity to sue upon contracts made with it or in vindication of its property rights. The Sherman Act, however, created new rights and remedies which are available only to those on whom they are conferred by the Act.⁴ The precise question for decision,

¹ Act of July 2, 1890, c. 647, 26 Stat. 209, 210.

² 31 F. Supp. 848.

³ 114 F. (2d) 413.

⁴ Wilder Mfg. Co. v. Corn Products Refining Co., 256 U. S. 165, 174; Fleitmann v. Welsbach Street Lighting Co., 240 U. S. 27, 29; Geddes v. Anaconda Copper Mining Co., 254 U. S. 590, 593.

therefore, is whether, by the use of the phrase "any person", Congress intended to confer upon the United States the right to maintain an action for treble damages against a violator of the Act.

Since, in common usage, the term "person" does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it.⁵ But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the term, to bring state or nation within the scope of the law.⁶

The Government admits that often the word "person" is used in such a sense as not to include the sovereign but urges that where, as in the present instance, its wider application is consistent with, and tends to effectuate, the public policy evidenced by the statute, the term should be held to embrace the Government. And it strongly urges that all the considerations which moved Congress to confer the right to recover damages upon individuals and corporations injured by violations of the Act apply with equal force to the United States which, as a large procurer of goods and services, is as likely to be injured by the denounced combinations and monopolies as is a natural or corporate person. We are asked, in this view, so to construe the Act as not to deny to the Government what public policy is thought to require.

Decision is not to be reached by a strict construction of the words of the Act, nor by the application of artificial canons of construction. On the contrary, we are to read the statutory language in its ordinary and natural sense, and if doubts remain, resolve them in the light, not only of the policy intended to be served by the enactment, but, as well, by all other available aids to construction. But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made.⁷

The recent expressions of this court in *Tigner v. Texas*, 310 U. S. 141, 148, 149, warn that it is not for the courts to indulge in the

⁵ *United States v. Fox*, 52 N. Y. 530; *Id.*, 94 U. S. 315, 321.

⁶ See *Levy v. McCartee*, 6 Pet. 102, 110; *United States v. Freeman*, 3 How. 556, 565; *Ohio v. Helvering*, 292 U. S. 360, 370; *Nardone v. United States*, 302 U. S. 379.

⁷ *The Pedro*, 175 U. S. 354, 364; *Dewey v. United States*, 178 U. S. 510, 519, 520; *Pirie v. Chicago T. & T. Co.*, 182 U. S. 438, 451; *White v. United States*, 191 U. S. 545, 551, 552; *Ebert v. Poston*, 266 U. S. 548, 554; *Helvering v. Oregon L. I. Co.*, 311 U. S. 267, 272.

business of policy making in the field of antitrust legislation. Congress has not left us at large to devise every feasible means for protecting the Government as a purchaser. It is the function of Congress to fashion means to that end, and Congress has discharged this duty from time to time according to its own wisdom. Our function ends with the endeavor to ascertain from the words used, construed in the light of the relevant material, what was in fact the intent of Congress.

1. Without going beyond the words of the section, the use of the phrase "any person" is insufficient to authorize an action by the Government. This conclusion is supported by the fact that if the purpose was to include the United States, "the ordinary dignities of speech would have led" to its mention by name.⁸ It is supported also by the collocation of the phrase in the section. The provision is that "any person" injured by violation of the Act "by any other person or corporation" may maintain an action for treble damages against the latter. It is hardly credible that Congress used the term "person" in different senses in the same sentence. Yet, unless it did, the United States would not only be entitled to sue but would be liable to suit for treble damages. The more natural inference, we think, is that the meaning of the word was in both uses limited to what are usually known as natural and artificial persons, that is, individuals and corporations. In addition, the concluding words of the section give the injured party, as part of his costs, a reasonable attorney's fee,—a provision more appropriate for a private litigant than for the United States.

2. The connotation of a term in one portion of an Act may often be clarified by reference to its use in others. The word "person" is used in several sections other than § 7: In §§ 1, 2, and 3 the phrase designating those liable criminally is "every person who shall" etc. In each instance it is obvious that while the term "person" may well include a corporation it cannot embrace the United States. In § 8 Congress attempted to make clear that the term "person" is to include a corporation. The provision is "that the word 'person', or 'persons', wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any

⁸ *Davis v. Pringle*, 268 U. S. 315, 318.

foreign country." The very fact, however, that this sweeping inclusion of various entities was thought important to preclude any narrow interpretation emphasizes the fact that if the United States was intended to be included Congress would have so provided expressly. We may say in passing that the argument that the United States may be treated as a corporation organized under its own laws, that is, under the Constitution as the fundamental law, seems so strained as not to merit serious consideration. It is fair to assume that the term "person", in the absence of an indication to the contrary, was employed by the Congress throughout the Act in the same, and not in different, senses.

3. The scheme and structure of the legislation is likewise important to a proper ascertainment of its purpose and intent. Sections 1, 2, and 3 impose criminal sanctions for violations of the acts denounced in those sections respectively. Section 4 gives jurisdiction to the federal courts of proceedings by the Government to restrain violations of the Act and imposes upon United States Attorneys the duty to institute equity proceedings to that end. Section 5 regulates service in such suits. Section 6 authorizes seizure, in the course of interstate transportation, of goods owned under any contract or pursuant to any conspiracy made illegal by the statute.

Thus far the Act deals in detail with the criminal and civil remedies of the Government in vindication of the policy of the legislation. There follows § 7, the only other substantive section, giving a civil action for an injury to property rights.

It seems evident that the Act envisaged two classes of actions,—those made available only to the Government, which are first provided in detail, and, in addition, a right of action for treble damages granted to redress private injury. If this be the fair construction of the Act, the Court's task is finished when it gives effect to the purposes of the law, evidenced by the various remedies it affords for different situations. Though the law gave a remedy by way of injunction at the suit of the United States, we were pressed to say that a private person should have the same remedy. We were compelled to answer that Congress had not seen fit so to provide.⁹ For the like reasons we cannot hold that since a private

⁹ *Minnesota v. Northern Securities Co.*, 194 U. S. 48, 71; *Paine Lumber Co. v. Neal*, 244 U. S. 459. The Act was amended to authorize suits for injunctions by private litigants. See the Clayton Act of October 15, 1914, c. 323, § 16, 38 Stat. 730, 737; 15 U. S. C. § 26.

purchaser is given a remedy for his losses in treble damages, the United States should be awarded the same remedy.

4. Supplemental legislation lends support to the view that Congress had in mind the distinction between public and private remedies and did not intend to confer a right of action on the United States by the use of the phrase "any person" in § 7. The anti-trust provisions of the Wilson Tariff Act¹⁰ follow the same pattern as the Sherman Act. Section 73¹¹ denounces combinations and agreements between parties importing articles from a foreign country and declares that every person guilty of violation of its terms shall be punished. Section 74 confers jurisdiction upon the federal courts and authorizes proceedings in equity by the United States to restrain such acts. Section 76 provides for seizure and forfeiture of property imported into the United States contrary to law and § 77 gives an action for treble damages to any person against any other person or corporation in the exact words of § 7 of the Sherman Act.

The antidumping provisions of the Revenue Act of 1916¹² make it a criminal offense for "any person" importing articles from a foreign country to sell, or cause to be imported or sold, such articles within the United States at substantially less than the market value of such articles at the time of exportation in the principal markets of the country of production, etc. They further declare that any person injured in his business or property by any violation may sue therefor in the United States courts and recover three-fold damages and costs, including a reasonable attorney's fee. It must be obvious that the United States cannot be embraced by the phrase "any person" there used.

When Congress came to supplement the Sherman Act by the Clayton Act,¹³ it included in the latter a significant section bearing upon the question under consideration. Doubts had arisen as to whether issues adjudicated in a criminal proceeding or a suit in equity brought by the United States should be taken as concluded in an action for treble damages subsequently brought by an injured

¹⁰ Act of August 27, 1894, c. 349, 28 Stat. 509, as amended by Act of Feb. 12, 1913, c. 40, 37 Stat. 667; 15 U. S. C. § 8.

¹¹ 28 Stat. 570, 37 Stat. 667.

¹² Act of September 8, 1916, c. 463, 39 Stat. 756, 798, 15 U. S. C. § 72.

¹³ Act of October 15, 1914, c. 323, 38 Stat. 730.

party. By § 5 of the Clayton Act it was sought to give such adjudication that effect. The section provides:

"A final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken."

Immediately following this provision the section continues:

"Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof."

Here again it seems clear that Congress recognized the distinction between proceedings initiated by the Government to vindicate public rights and actions by private litigants for damages.

It should be noted that § 1 of the Clayton Act again defined the term "person" exactly as it was defined by § 8 of the Sherman Act, and § 4 again enacted that any person injured by a violation might recover treble damages together with a reasonable attorney's fee.

5. There has been a considerable body of judicial expression to the effect that § 7 authorizes an action for damages only by private suitors and not by the Government.¹⁴ While none of the cases presented the exact question here involved, the statements bearing on the subject exhibit a uniform opinion contrary to the Government's present contention.

¹⁴ *Pidcock v. Harrington*, 64 Fed. 821, 822; *Lowenstein v. Evans*, 69 Fed. 908, 911; *Greer, Mills & Co. v. Stoller*, 77 Fed. 1, 3; *City of Atlanta v. Chattanooga Foundry*, 101 Fed. 900, 904; *Standard Sanitary Manufacturing Co. v. United States*, 226 U. S. 20, 52; *United States v. Patterson*, 201 Fed. 697, 714; *General Investment Co. v. Lake Shore & Michigan So. Ry. Co.*, 260 U. S. 261, 286; *Glenn Coal Co. v. Dickinson Fuel Co.*, 72 F. (2d) 885, 889; *Quemos Theatre Co. v. Warner Bros. Pictures*, 35 F. Supp. 949, 950; *Tigner v. Texas*, 310 U. S. 141, 148.

6. The legislative history is persuasive that the Sherman Act was not intended to give the United States a civil action for damages. Senator Sherman, on March 18, 1890, introduced a bill which, in § 1, provided that the United States might bring various civil actions and, in § 2, that "any person" should be entitled to sue any "person" or "corporation" for double damages.¹⁵

In the discussion of the bill it was pointed out that § 1 authorized the United States to bring civil actions including those for simple damages and that, under § 2, private parties were entitled to sue for double damages. Senator Sherman stated that § 2 gave a right to sue for double damages only to private parties and not to the United States. He stated that the civil suit by the United States authorized by § 1 might be for an ouster of the power of the corporation, for damages, or in *quo warranto*, and added: "But the second section provides purely a personal remedy, a civil suit also by citizens of the United States."¹⁶

As is well known, after Senator Sherman's bill had been amended, Senator Hoar rewrote most of the bill. In so doing he eliminated § 1 with its provision for civil suits by the United States and substituted §§ 1, 2, 3, 4, and 6, specifying the remedies, civil, criminal, and by way of forfeiture, available to the United States. In that revision he retained, with slight change, § 2 of the bill, increasing the recoverable damages to treble instead of double, and renumbered the section as § 7. In this form the bill was adopted.

As already stated, the language of § 7 of the Sherman Act was repeated in later statutes extending the antitrust laws although in the meantime this and other courts had expressed the view that

¹⁵ "Section 1:

" . . . And the circuit court of the United States shall have original jurisdiction of all suits of a civil nature at common law or in equity arising under this section, and to issue all remedial process, orders, or writs proper and necessary to enforce its provisions. And the Attorney-General and the several district attorneys are hereby directed, in the name of the United States, to commence and prosecute all such cases to final judgment and execution."

"Section 2:

"That any person or corporation injured or damaged by such arrangement, contract, agreement, trust, or combination defined in the first section of this Act may sue for and recover, in any court of the United States of competent jurisdiction, without respect to the amount involved, of any person or corporation a party to a combination described in the first section of this Act, twice the amount of damages sustained and the costs of the suit, together with a reasonable attorney's fee."

¹⁶ 21 Cong. Rec. 2563-2564.

the section accorded the Government no right of suit for treble damages. When the Clayton Act was before the Senate, Senator Culberson, Chairman of the Committee which reported the bill, enumerated the usual types of action prosecuted under the Sherman Act,—criminal prosecutions, suits in equity, and actions for damages, and stated with respect to Government suits under the Sherman Act and the Clayton Act: "There is no suit authorized by any of these statutes except a criminal prosecution or a suit in equity. The United States does not bring a suit at law for damages."¹⁷

In 1926 the Attorney General, in response to a Senate Resolution asking for information with respect to cases instituted under the first seven sections of the Sherman Act, wrote: "Under Section 7, which gives to private persons the right to sue for injuries arising under the act, a number of actions have been instituted. The United States, however, under the statute is not a party to suits under that section."¹⁸

Senator O'Mahoney has introduced a bill, which is pending as S. 2719, prepared jointly by him and by the Assistant Attorney General in charge of antitrust matters. On June 28, 1939, the Senator stated that the purpose of the bill was to provide more effective civil remedies. In the course of his statement he said: "There is only one other remedy worth mentioning available under existing law to the Department of Justice—the civil action for an injunction. In addition, there is the action in damages by a private person who has been injured. Neither of these remedies is effective." He further stated: "The bill permits the United States, in effect to bring a suit for damages against an offending corporation and against its individual directors and officers."¹⁹

¹⁷ 51 Cong. Rec. 13898. Statements by members of the House Judiciary Committee indicate a similar view: 51 Cong. Rec. 9079, 9490. Representative Webb the chairman of that Committee mentioned the civil remedies available under the bill as treble damage actions by persons, suits by the Federal Trade Commission, suits by the United States for injunctions, and similar suits by persons. He then said "Certainly the remedies are cumulative. The remedies pile up, and all of the remedies are open to the individual in a suit." 51 Cong. Rec. 1627. But obviously he meant that the remedies given the public and the individual *respectively* were cumulative, as they clearly are; for it is plain the remedy given the Federal Trade Commission is not afforded to the individual.

¹⁸ Sen. Doc. No. 79, 69th Cong., 1st Sess., p. 1.

¹⁹ 84 Cong. Rec. 8192.

*and to the
Government*

7. It is significant that, in the light of the expressions by the courts, the supplemental legislation, and the legislative history, no action has ever been brought by the United States under § 7 in the fifty years during which the statute has been in force until the present action was instituted. Down to the close of the year 1937, 428 criminal prosecutions and suits in equity had been instituted by the Government.²⁰ Down to December, 1939, 103 civil suits had been instituted by private persons, including corporations.²¹ In the meantime the World War intervened with the Government a purchaser of enormous quantities of material and supplies. Then, as now, the complaint was prevalent that agreements and conspiracies existed to fix and maintain prices of materials needed by the Government. And throughout the life of the legislation able and vigilant officials devoted to enforcement of the policy of the Sherman Act have not been wanting.

In these circumstances the conviction that no right to sue had been given the Government, rather than a supine neglect to resort to an available remedy seems to us the true explanation of the fact that no such actions have been instituted by the United States.

In summary, we are of opinion that the text of the Act, taken in its natural and ordinary sense, makes against the extension of the term "person" to include the United States and that the usual aids to construction, taken together, instead of inducing the contrary conclusion, go to support the view that Congress did not use the word in the sense for which the Government contends.

The judgment is affirmed.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

²⁰ "Federal Antitrust Laws", published by the Department of Justice January 1938.

²¹ 49 Yale Law Journal 296.

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SUPREME COURT OF THE UNITED STATES.

No. 484.—OCTOBER TERM, 1940.

United States of America, Petitioner,

vs.

The Cooper Corporation, et al.

} On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Second Circuit.

[March 31, 1941.]

Mr. Justice BLACK, dissenting.

In order to give purchasers of goods an opportunity to buy them at prices fixed by competitive trade, the Sherman Act made it illegal to fix prices by combination or conspiracy. It is difficult for me to believe that Congress did not intend to give equal protection to all purchasers similarly injured. In my judgment, no language of that Act, nothing in its history, and no argument now presented for our consideration makes necessary the conclusion that Congress intended to discriminate in favor of some purchasers and against others. It would require clear and unequivocal statutory language to persuade me that Congress intended to grant a remedy to all except one of those who were injured by trust prices—the “all” including every natural and artificial person, every corporation and association,¹ foreign and domestic, and the single exception being the United States, which buys more goods and services than any other single purchaser.² No such clear and unequivocal statutory language exists.

¹ A 1940 report to the Senate, made by the Secretary of the Treasury pursuant to a Senate Resolution, revealed that the federal government was transacting part of its business through the medium of at least 1469 government corporations. Senate Document No. 172, 76th Cong., 3rd Sess., Part 1, p. 4. The judgment here does not foreclose such corporations from suing for damages under section 7, or so I assume. If I am correct in my assumption, the result is that as to those purchases made by its corporate agencies, the Government is protected by the Sherman Act, while as to those purchases made by its non-corporate agencies, it is not so protected. A process of statutory construction which results in giving to government corporations a right denied to constitutionally authorized government departments seems to me to conflict with the frequently declared rule that a statute should not be interpreted in such way as to produce an unreasonable or unjust result. See *United States v. American Trucking Associations*, 310 U. S. 534, 542-543; *Sorrells v. United States*, 287 U. S. 435, 446.

² For a recent study, see “Government Purchasing — An Economic Commentary”, Monograph No. 19 of the Temporary National Economic Committee (1940).

And no plausible reason has been hazarded to prove that the government as a purchaser of goods needs less protection from unlawful combinations than do other buyers.³ Many deplorable instances in our history, in fact, indicate the contrary. Congress, no doubt stimulated to action by these historical occurrences, has by numerous enactments recognized the urgent necessity for safeguarding governmental purchases of goods and services against unfair and collusive price-fixing. To that end, competitive bidding as a prerequisite to government contracts has been the general statutory rule over a long period of years, and combinations to deprive the government of the advantages of such competition have been made criminal. It is therefore strange indeed that the Sherman Act, the greatest of all legislative efforts to make competition, not combination, the law of trade, should now be found to afford a greater protection against collusive price-fixing to every other buyer in the United States than is afforded to the United States itself.

So much for what seems to me to be the logical approach to the problem, and the one that should cause us to say that the government can sue for damages. If, however, we apply familiar canons of construction, I think we are led to the same result. For it is a primary principle that a law should be construed so as to carry out its purpose, in the light of the evil aimed at and the protection intended to be afforded. Here, among the evils legislated against was price-fixing by combination, and among the remedies afforded was the giving of a right of action to purchasers injured by prices so fixed. The result of this case—denying to the largest single purchaser of all goods manufactured and sold in the nation the protection afforded by this legislation—is to restrict the remedy in such way that the evil aimed at is less likely to be suppressed. For the construction given the Sherman Act, insofar as sales to the government and civil damages are concerned, enables those guilty of violating it to elude its provisions, escape its consequences, and defeat its objects.

Nor do I believe that the previous failure of the Attorneys General of the United States to bring actions similar to this should be

³ An argument is offered to the effect that the government has no need of a right to damages, because it has the power to bring criminal and injunctive proceedings. But the right to bring those proceedings is given to the government for the protection of the public, rather than for its self protection as a purchaser. Further, criminal and injunctive proceedings, whatever their efficacy, do not achieve the object of section 7, which is to indemnify all injured purchasers.

deemed a persuasive reason to read the government out of the Act's benefits. The 1928 statement of the Attorney General to the effect that "the United States . . . is not a party to suits under" section 7 does not supply such a reason. For in the quoted statement the Attorney General did not take the position that the government lacked the power to sue for civil damages; apparently what he had reference to was the fact that the Sherman Act did not make the United States a party to actions for civil damages by private persons against private persons. We do not know and cannot possibly determine why no prior suits were instituted for the benefit of the government. To assign reasons for such inaction is but to guess. And the guesses would doubtless vary almost in accordance with the preconceived notions of the guessers. But whatever might have been the reasons behind the government's failure to sue, sure it is that the Attorney General is not the purchasing agent of the government. He cannot be assumed to have constant knowledge of the manifold problems that face those who buy the government's supplies. In the final analysis, it is probably true that even an Attorney General who might zealously desire to enforce the criminal provisions of the Sherman Act would not likely be stimulated to institute civil proceedings for damages unless his attention was directed to the point by keenly alert and diligent purchasing agencies. To attempt to construe the Sherman Act by a vain effort to appraise the reasons responsible for the non-action of Attorneys General is a journey into the realm of imponderables I find it unnecessary to take. I would simply read the Act from its language and manifest purpose as giving all purchasers of goods a right to sue if they have been injured as the result of prices held up by those types of unlawful combination condemned by the Act.⁴

⁴ Though the Act is all-inclusive in naming those who may sue for damages, it is not equally all-inclusive in describing those acts which may be regarded as unlawful combinations. This is true both because of the original language and objects of the Sherman Act itself, and because of subsequent legislation. The most notable example of such subsequent legislation is that portion of the Clayton Act which provides: "The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws." 38 Stat. 731, 15 U. S. C. § 17. See *Apex Hosiery Co. v. Leader*, 310 U. S. 469.

The principle of strict construction now adopted in this case, resulting as it does in denying to the government the benefit of section 7 of the Sherman Act, is a radical departure from a long established policy under which the courts have construed laws most liberally in order to declare the government entitled to their benefits.⁵ And certainly it can hardly be denied that the language of the Act, giving all persons a right of action, should if liberally construed be held to justify suit by the United States. For in *Cotton v. United States*, 11 How. 229, 231, decided forty years before the Sherman Act was adopted, this Court said in speaking of the United States: "Every sovereign State is of necessity a body politic, or artificial person, and as such capable of making contracts and holding property It would present a strange anomaly, indeed, if, having the power to make contracts and hold property as other persons, natural or artificial, they were not entitled to the same remedies for their protection." And, speaking in similar vein in *Helvering v. Stockholms Enskilda Bank*, 293 U. S. 84, 92, after having cited Blackstone for the proposition that the sovereign is a "corporation", and after having gone even beyond this to hold that the statutory word "resident" included the United States, the Court said: "This may be in the nature of a legal fiction; but legal fictions have an appropriate place in the administration of the law when they are required by the demands of convenience and justice."⁶

These particular cases are but facets of a general rule that has long been accepted—the United States can exercise all of the legal remedies which other persons, bodies or associations can exercise,

⁵ It is argued that if the government can sue for damages it may also be sued for damages. That question is not before us and need not be decided. Other principles will be material if such a question ever should be presented. See *United States v. Sherwood*, this day decided; *Nardone v. United States*, 302 U. S. 379, 383-384; *United States v. Knight*, 14 Pet. 301, 315. Among these principles the most important is that of sovereign immunity. "The sovereignty of the United States raises a presumption against its suability, unless it is clearly shown; nor should a court enlarge its liability to suit beyond what the language [of the statute in question] requires." *Eastern Transportation Co. v. United States*, 272 U. S. 675, 686; *Price v. United States*, 174 U. S. 373, 375-376; *United States v. Sherwood*, *supra*.

⁶ To this statement the Court added: "If to carry out the purposes of a statute it be admissible to construe the word 'person' as including the United States [cases to that effect having previously been cited], it is hard to see why, in like circumstances, it is inadmissible to construe the word 'resident' as likewise including the United States." Cf. *Ohio v. Helvering*, 292 U. S. 360, 370-71; *Stanley v. Schwalby*, 147 U. S. 508, 517.

both at common law and under statutes,⁷ unless there is something in a statute or in its history to indicate an intent to deprive the United States of that right.⁸ In this case, nothing in the Sherman Act itself and nothing in its legislative history makes necessary the conclusion that Congress intended to withhold from the United States a remedy given to all other purchasers.⁹ Under these circumstances, it is my opinion that the judgment below should be reversed.

Mr. Justice REED and Mr. Justice DOUGLAS join in this dissent.

⁷ See *Dugan v. United States*, 3 Wheat. 172; *United States v. Gear*, 3 How. 120; *Cotton v. United States*, *supra*. Cf. *Dollar Savings Bank v. United States*, 19 Wall. 227; *United States v. Chamberlin*, 219 U. S. 250.

⁸ Cf. *Davis v. Pringle*, 268 U. S. 315.

⁹ The legislative history of the Sherman Act is not enlightening on the question now before us. At best, all that can be said of the very few and scattered statements that were made on the subject during the debates on the Clayton Act is that they look both ways.